CHAPTER 1 INCOME AND FRANCHISE TAXES

Secs.

100 GENERAL PROVISIONS

100.1 The provisions of this chapter are adopted under authority of §1 of Title 16 of the "District of Columbia Income and Franchise Tax Act of 1947," 61 *Stat.* 359 (Also referred to in this chapter as the "Act"), as amended by §601 of Title 6 of the "District of Columbia Revenue Act of 1956," 70 *Stat.* 71 (D.C. Code §§47-1816.1 and 47-1816.2).

100.2 The provisions of this chapter shall be in effect with respect to taxable years commencing on and after January 1, 1956.

100.3 References in this chapter to titles or sections of the Act, unless otherwise specified, are to subdivisions of the "District of Columbia Income and Franchise Tax Act of 1947," as amended.

100.4 It is the purpose of the Act, as amended, to impose the following taxes in accordance with the definitions in Title 1 of the Act:

(a) An income tax upon the entire net income of every resident and every resident estate and trust; and

(b) A franchise tax upon every corporation and unincorporated business for the privilege of carrying on or engaging in any trade or business within the District, and of receiving such other income as is derived from sources within the District, except those corporations and unincorporated business which are specifically excluded.

100.5 The words and terms defined in §4 of Title 1 of the Act, and elsewhere in the Act, shall have the same meaning as defined in the Act when used in this chapter.

100.6 The term "Deputy Chief Financial Officer" means the Deputy Chief Financial Officer of the Office of Tax and Revenue ("Office"), or his or her designee, agent, or representative.

100.7 The reference in §2 of Title III of the Act to obligations or securities of the United States, its agencies or instrumentalities relates only to obligations and securities which possess all of the following characteristics:

(a) Are evidenced by a written document;

(b) Contain a binding promise by the United States to pay specified sums on specified dates;

(c) Authorized specifically by the Congress of the United States pledging the full faith and credit of the United States; and

(d) Provide for the payment of interest.

100.8 Obligations or securities of the United States, its agencies or instrumentalities meeting the criteria set forth in §100.7 shall include, but are not limited to, the following items:

(a) U.S. Savings Bonds;

(b) U.S. Treasury Notes; and

(c) U.S. Treasury Bills.

100.9 Obligations or securities of the United States, its agencies or instrumentalities which shall not be exempt from taxation include, but are not limited to, the following:

(a) Interest on federal tax refunds; and

(b) Obligations merely guaranteed but not issued directly by the U.S. Government, such as Federal National Mortgage Association (Fannie Mae) and certain Government National Mortgage Association (Ginnie Mae) securities.

100.10 The burden of showing that an obligation or security of the United States, its agencies or instrumentalities (the interest from which has been excluded from gross income) meets the criteria contained in §100.7 shall be on the taxpayer claiming the exclusion.

100.11 In the event of a change in tax rates during a taxable year and if a law does not otherwise provide, the following shall apply:

(a) A computation shall be made by applying to the taxable income for the entire taxable year the rate for the period within the taxable year before the effective date of change;

(b) Another computation shall be made by applying to the taxable income for the entire taxable year the rate for the period within the taxable year on or after such effective date; and

(c) The tax imposed is the sum of the following:

(1) An amount which bears the same ratio to the tax computed in paragraph (a) of this subsection as the number of days in the taxable year; and

(2) An amount which bears the same ratio to the tax computed in paragraph (b) of this subsection as the number of days in such period bears to the number of days in the taxable year.

AUTHORITY: Unless otherwise noted, the authority for this chapter is §1 of the District of Columbia Income and Franchise Tax Act of 1947, 61 *Stat.* 359, as amended by §601 of the District of Columbia Revenue Act of 1956, 70 *Stat.* 71, D.C. Code §§47-1816.1 and 47-1816.2 (1981 Ed.).

SOURCE: Commissioner's Order 56-1431 effective July 24, 1956; as amended by Regulation No. 71-6 effective February 25, 1971, 17 DCR 567 (March 8, 1971), 16 DCRR §§300.1, 301.1 through 301.3 and 309.1; by Final Rulemaking published at 32 DCR 1354 (March 8, 1985); and by Final Rulemaking published at 32 DCR 1776 (March 29, 1985).

EDITOR'S NOTE: The Office of the Chief Financial Officer of the District of Columbia published a Notice of Public Interest at 44 DCR 2345 (April 18, 1997) changing the name of the "Department of Finance and Revenue" to the "Office of Tax and Revenue."

101 [REPEALED] 32 DCR 1354, 1355 (March 8, 1985).

102 EXEMPT ORGANIZATIONS

102.1 The responsibility for establishing the right to exemption from the tax, as provided by Title 2 of Article 1 of the Act shall rest upon the organization claiming the exemption.

102.2 An organization shall not be exempt merely because it is not organized and operated for profit.

102.3 In order to establish an exemption, each organization claiming exemption shall file an affidavit with the Deputy Chief Financial Officer showing the character of the organization, the purpose for which it was organized, its actual activities, its sources of income, whether any of its income is credited to surplus or may inure to the benefit of any private shareholder or individual, and in general all facts relating to its operations which affect its right to exemption.

102.4 A copy of the charter or articles of incorporation, the by-laws of the organization, and the latest financial statement showing the assets, liabilities, receipts, and disbursements of the organization shall be attached to the affidavit filed under §102.3.

102.5 If the organization has received a ruling on its exemption status for federal income tax purposes from the U.S. Internal Revenue Service, a copy of that ruling shall be submitted to the Deputy Chief Financial Officer.

102.6 The granting of exempt status to any organization under Title 2 of the Act shall not relieve that organization of its responsibility to withhold tax from its employees as required by the Act.

102.7 A corporation, community chest, fund, or foundation which is organized for and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals (no part of the net earnings of which inures to the benefit of any private individual or shareholder, and no part of the activities of which is carrying on propaganda) shall not qualify for exemption under §1(d) of Title 2 of the Act unless it operates "to a substantial extent within the District."

102.8 Operations within the District do not include those activities confined solely to the solicitation of funds, or to the situs of its organizational adjuncts; but do include the actual dispensing within the District to a substantial extent of the religious, charitable, educational, or other benefits which the organization affords.

102.9 In the case of an institution which is national in scope, that is, its activities extend to a majority of the States, dispensing of benefits to a substantial extent means at least five percent (5%) of the total benefits conferred in the institution's prior calendar or fiscal year, as the case may be, were conferred upon District of Columbia residents. In the case of an institution which is not national in scope, that is, its activities extend to less than a majority of the States, dispensing of benefits to a substantial extent means at least twenty-five percent (25%) of the total benefits conferred in the institution's prior calendar or fiscal year, as the case may be, were conferred upon District of Columbia residents.

102.10 The following activities shall be considered to determine whether an institution is dispensing substantial benefits within the District:

(a) Dispensing of direct benefits, including but not limited to, grants, scholarships, and other forms of direct assistance conferred upon residents of the District;

(b) Expenditures within the District in connection with scientific and research studies, conferences, seminars, and similar activities if the activities result in identifiable benefits to District residents; and

(c) Expenditures for payroll, rent, services and supplies incurred in the District in order to provide the benefits for which the institution was formed; Provided, that the expenditures shall be considered only if it can be clearly shown that the expenditures result in direct benefits for District resident individuals or businesses. Expenditures (such as payments for social functions, lobbying, etc.) not incurred to produce benefits shall not be considered.

102.11 The aggregate benefits and expenditures referred to in §§102.10(a), (b), and (c) shall equal or exceed the following percentages of similar benefits dispensed and expenditures incurred everywhere the institution conducts its activities:

(a) Five percent (5%), if the institution is national in scope (activities extend to a majority of the States); or

(b) Twenty-five percent (25%), if the institution is not national in scope (activities extend to less than a majority of the States).

SOURCE: Commissioner's Order 56-1431 effective July 24, 1956, 16 DCRR §§302.1 and 302.2; as amended by the Third Amendment to the Revenue Act of 1975 Act, D.C.Law 1-61, 22 DCR 4283 (February 17, 1976); by Final Rulemaking published at 30 DCR 1922 (April 29, 1983); by Final Rulemaking published at 30 DCR 3263 (July 1, 1983); and by Final Rulemaking published at 32 DCR 1354 (March 8, 1985).

103 EXEMPT ACTIVITIES OF CIVIC LEAGUES AND ORGANIZATIONS

103.1 The Act [§1(f) of Title 2] exempts the following:

(a) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare; and

(b) Local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted principally to charitable, educational, or recreational purposes within the District.

103.2 One of the principal requirements for exemption under §103.1(b) is that the net earnings of the organization shall be chiefly devoted to the favored purposes within the District in order that the organization may be entitled to exemption under §1(f).

103.3 The fact that some of the activities and benefactions of an organization devoted to charitable, educational, or recreational purposes may reach beyond the confines of the District, shall not deprive the organization of exemption under §1(f) if its net earnings are principally devoted to those purposes within the District.

103.4 Exempt organizations shall submit an annual report of receipts and expenditures on or before the 15th day of the fifth (5th) month following the close of the organization's annual reporting period. A copy of the annual report submitted to the Internal Revenue Service (Form 990) is acceptable for reporting purposes under this subsection.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §302.3; as amended by the Third Amendment to the Revenue Act of 1975 Act, D.C. Law 1-61, 22 DCR 4283 (February 12, 1976); by Final Rulemaking published at 30 DCR 1922 (April 29, 1983); by Final Rulemaking published at 32 DCR 1354, 1355 (March 8, 1985).

104 SALARY DEDUCTIONS: UNINCORPORATED BUSINESSES

104.1 Unincorporated businesses not exempt from taxation shall be allowed an aggregate reasonable salary allowance for services rendered by the individual owners or members actively engaged in the conduct of the business. The salary allowance shall in no event exceed thirty percent (30%) of the District net income of the business computed without benefit of this allowance.

104.2 In determining a reasonable salary allowance, fees paid to independent management or collection entities for management services performed on behalf of the unincorporated business shall be considered.

104.3 Any amount taken as a salary allowance deduction by an unincorporated business shall be apportioned to the owners or members in the same ratio as the net income of the business is apportioned for federal income tax purposes.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §303.1; as amended by Final Rulemaking published at 30 DCR 1922, 1923 (April 29, 1983); and by Final Rulemaking published at 32 DCR 1354, 1355 (March 8, 1985).

105 GENERAL REQUIREMENTS FOR FILING TAX RETURNS

105.1 All returns required under Title 5 of the Act shall be filed on the forms and in the manner prescribed by the Deputy Chief Financial Officer.

105.2 Each return filed shall be signed by the taxpayer, either under oath or otherwise, as the Deputy Chief Financial Officer shall prescribe in the form of return.

105.3 The Act requires every individual who is a resident of the District, as defined in the Act, to file a return without being called upon to do so, whenever one or more of the following criteria apply:

(a) Gross income for the taxable year, if single or married and not living with spouse, exceeds seven hundred fifty dollars ($750) plus the applicable zero bracket amount specified in §4(z) of Title 1 of the Act;

(b) Gross income for the taxable year, if married and living with spouse, exceeds one thousand five hundred dollars ($1,500) plus the applicable zero bracket amount specified in §4(z) of Title 1 of the Act; Provided, that if such persons elect to file separate returns, the gross income of each spouse exceeds the sum of his or her personal exemptions; or

(c) Gross sales or gross receipts from any trade or business (other than an unincorporated business subject to tax under Title 8 of the Act) exceeds five thousand dollars ($5,000), regardless of the amount of the person's gross income.

(d) [Repealed] 30 DCR 1255 (March 18, 1983).

105.4 If a deduction is claimed for household and dependent care services, married persons shall not be required to file a joint District income tax return.

105.5 Married persons who do not file a joint return and who claim the deduction pursuant to §105.4 shall file separate District income tax returns on a single form prescribed by the Deputy Chief Financial Officer.

105.6 In determining whether an individual has maintained a place of abode in the District for one hundred eighty-three (183) days, temporary absences from a District residence (i.e., vacations, hospitalization, business trips, and the like shall be considered as periods of District residency.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCR §§303.1, 304.1, and 304.5(a); as amended by the Third Amendment to the Revenue Act of 1975 Act, D.C. Law 1-61, 22 DCR 4283 (February 12, 1976); and by Final Rulemaking published at 30 DCR 1255 (March 18, 1983).

106 TIME AND PLACE FOR FILING TAX RETURNS

106.1 All returns of income for the preceding taxable year required to be filed under the provisions of the Act shall be filed with the Deputy Chief Financial Officer on or before the 15th day of April of each year; Provided, that returns made on the basis of a fiscal year which is not the same as the calendar year shall be filed on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year; and Provided, further, that returns required to be filed for the preceding year under the provisions of Title 7 of the Act shall be filed on or before the 15th day of March in each year, except that such returns, if made on the basis

of a fiscal year, shall be filed on or before the 15th day of the 3rd month following the close of the fiscal year.

106.2 If the last date for the filing of a return falls on a Saturday, Sunday, or a legal holiday, the last date for filing the return shall be the first business day following that Saturday, Sunday, or legal holiday.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §304.6; as amended by Final Rulemaking published at 30 DCR 1255 (March 18, 1983); and by Final Rulemaking published at 32 DCR 1354, 1355 (March 8, 1985).

107 TAX RETURNS OF UNINCORPORATED BUSINESSES

107.1 Returns shall be filed by every unincorporated business engaging in or carrying on any trade or business within the District or receiving income from sources within the District having a gross income of more than twelve thousand dollars ($12,000) regardless of whether or not it has a net income.

107.2 For purposes of this section, the meaning of "gross income" shall be gross revenue from all District sources before deduction of cost of goods, expenses, and other allowable deductions permissible in the determination of net income.

107.3 The return of an unincorporated business shall be made by the taxpayer or the taxpayers liable for the payment of the tax.

107.4 The tax imposed under the Act may be assessed in the name of the unincorporated business or in the name or names of the person or persons liable for the payment of the tax, or both.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §304.5(c); as amended by Final Rulemaking published at 30 DCR 1922, 1923 (April 29, 1983).

108 TAX RETURNS OF PARTNERSHIPS

108.1 Returns shall be filed by every partnership engaging in any trade or business or receiving income from sources within the District.

108.2 If a partnership is not required to file an unincorporated business return under certain conditions, it is not relieved from filing a partnership return as required by Title 5 of the Act; except that a partnership return, as such, shall not be required to be filed if the taxpayer files an unincorporated business tax return.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §304.5(d).

109 CONSOLIDATED TAX RETURNS

109.1 Pursuant to the provisions of D.C. Code §47-1805.2(5)(B), the Office of Tax and Revenue ("Office") may permit the filing of a consolidated return by an "affiliated group" of corporations and financial institutions under the conditions which meet at least the following requirements:

(a) All corporations and financial institutions are an "affiliated group" as defined in §1504 of the Internal Revenue Code;

(b) All corporations and financial institutions are subject to the District franchise tax on one hundred percent (100%) of net income from trade or business subject to apportionment;

(c) All corporations and financial institutions use the same accounting method and the same accounting period;

(d) Approval has been obtained from the Office prior to the last day for filing the return; and

(e) The affiliated group does not contain a corporation or financial institution which may be barred by law from being unitary.

109.2 Although in many cases the minimum requirements set forth in §109.1 will be sufficient for permission to file a consolidated return, each request shall be treated on an individual basis and, if circumstances warrant, additional criteria may be required.

109.3 Permission to file a consolidated return is binding as long as the affiliated group remains in existence, unless the Office of Tax and Revenue consents to a discontinuance.

109.4 Each consolidated return shall have a statement and schedules attached showing the net income of each of the corporations as if each of the corporations and financial institutions had filed a separate return.

109.5 Financial institutions subject to the provisions of Title 7 required to file returns under the provisions of Title 5 of the Act shall attach a copy of the Report on Gross Earnings for each taxable period during the three (3) year transition period.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §304.5(b); as amended by Final Rulemaking published at 28 DCR 5393 (December 18, 1981), incorporating text of Proposed Rulemaking published at 28 DCR 4112 (September 18, 1981); by Final Rulemaking published at 30 DCR 1922, 1923 (April 29, 1983); and by Final Rulemaking published at 32 DCR 1354, 1356 (March 8, 1985).

110 DISCLOSURE OF TAX RETURN INFORMATION

110.1 The Deputy Chief Financial Officer, in his or her discretion, may divulge or make known any information contained in, or related to, any report, application, license, or return required under the provisions of the Act, except the following:

(a) Information which may be contained in a return relating to the amount of income; or

(b) Any particular relating to the amount of income or the computation of the amount of income.

110.2 The Deputy Chief Financial Officer may divulge or make known information such as the following:

(a) The name and address of an individual or corporation;

(b) The names and addresses of corporate officers; and

(c) Other information which does not relate to the amount of income or particulars relating to the computation of income.

110.3 Notwithstanding the restrictions placed upon the Deputy Chief Financial Officer by this section, the Deputy Chief Financial Officer may furnish a complete copy of any income tax return to the following:

(a) Any officer of the District having a right to a copy of a tax return in his or her official capacity;

(b) The U.S. Internal Revenue Service of the Treasury Department of the United States; or

(c) The proper officer (or authorized representative) of any State imposing an income tax, if that State grants substantially similar privileges to the Deputy Chief Financial Officer.

110.4 Persons desiring to inspect applications and related financial documents of organizations which have been granted exemption shall direct their requests (in writing) to the Deputy Chief Financial Officer, Office of Tax and Revenue.

110.5 The Deputy Chief Financial Officer shall respond to the reports (in writing) not later than fifteen (15) calendar days from the date of receipt of the request. The response shall set the time, place and condition(s) for inspecting the documents.

110.6 Reproductions for public use of any documents available for inspection pursuant to §110.4 shall be prohibited.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §304.7; as amended by Final Rulemaking published at 32 DCR 1354, 1356 (March 8, 1985).

111 INFORMATION RETURNS

111.1 Each person making payments of fixed or determinable income of six hundred dollars ($600) or more in the aggregate in any calendar year to a resident shall render a return of the payments for that year on or before February 28th of the following year, except as specified in §§111.2 and 111.9.

111.2 Payments of the following character, although amounting to six hundred dollars ($600) or more during a calendar year, need not be reported in information returns:

(a) Payments of income to non-residents;

(b) Payments of income upon which District income tax has been withheld at the source;

(c) Payments which, under the provisions of §2(a) of Title 3 of the Act, do not constitute gross income to the recipient;

(d) Payments by a broker to the broker's customers;

(e) Any type payments made to corporations or financial institutions;

(f) Bills paid for merchandise, telegrams, telephone, freight storage, and similar charges;

(g) Payments of rent made to real estate agents (but the agent must report payments to the landlord if the amount paid during the calendar year was six hundred dollars ($600); and

(h) Salaries and profits paid or distributed by a partnership to the individual partners.

111.3 In order to make necessary a return of information, the income shall be fixed or determinable, it need not be annual or periodical.

111.4 An amount is considered paid to the recipient when it is credited or set apart for the recipient without any substantial limitation or restriction on the time or manner of payment or condition under which payment is to be made.

111.5 A return shall be made in each case on Form D-99, accompanied by Form D-96 showing the number of returns filed.

111.6 A copy of Federal Form 1099 or W-2 may be submitted instead of Form D-99.

111.7 Form D-99 which has been approved by the Deputy Chief Financial Officer shall show the following:

(a) The name and address of the person making payments;

(b) The name and address of the recipient and the recipient's social security number. If the present address is unknown, the last known address shall be given; and

(c) The nature and total amount of the payments.

111.8 If the District of Columbia agrees to participate in the combined Federal/State Information Reporting Program, a taxpayer complying with the Federal information requirements shall be deemed to have complied with the requirements for filing District information returns.

111.9 Each person making payments of interest or dividends (as those terms are respectively defined in §§6042(b) and 6049(b) of the Internal Revenue Code of 1954) of ten dollars ($10) or more in the aggregate in any calendar year to a

resident shall render a return of the payments for that year on or before February 28th of the following year.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §§304.2, 304.3 and 304.4; as amended by Final Rulemaking published at 28 DCR 5393 (December 18, 1981), incorporating text of Proposed Rulemaking published at 28 DCR 4112 (September 18, 1991); by Final Rulemaking published at 30 DCR 1922, 1933 (April 29, 1983); and by Final Rulemaking published at 32 DCR 1354, 1356 (March 8, 1985).

112 OPTIONAL TAX COMPUTATION FOR D.C. RESIDENTS

112.1 Any resident other than a fiduciary, may elect to compute the tax due in accordance with the Optional Tax Table(s) if taxable income is less than fifty thousand dollars ($50,000).

112.2 [Deleted] 30 DCR 1255 , 1256 (March 18, 1983).

SOURCE: Commissioners' Order 60-85 effective January 14, 1960, 6 DCR 197 (January 25, 1960), 16 DCRR §305.1; as amended by Final Rulemaking published at 30 DCR 1255, 1256 (March 18, 1983).

113 PROPERTY TAX CREDIT

113.1 If a claimant or member of the household uses part of the dwelling house for business purposes, or part of the dwelling house is rented to someone who is not a member of the household, property taxes accrued or amount of rent used in determining property taxes accrued shall be reduced by the amount of the deduction allowable for property taxes or rent on any District income or franchise tax return in determining the net income of the business or the net rental income.

113.2 If a claimant owns two (2) or more dwelling houses in the District during the calendar year, property taxes accrued shall be determined by multiplying by two (2) the amount of first-half taxes ordinarily due and payable in September of that year on the homes resided in by the claimant on December 31st of that year.

113.3 The Deputy Chief Financial Officer shall, upon the written request of a claimant, determine the value of a claimant's home for purposes of determining property taxes accrued when that home is an integral part of a larger unit, such as a multipurpose building or a multi-dwelling building.

113.4 In case of the death of one of the parties to a joint return after the claim is filed but before it is paid, the surviving spouse shall be deemed to be the claimant if the home was held as tenants by the entirety or as joint tenants.

113.5 The table to be provided for the individual entitled to claim this credit other than the elderly, blind, or disabled shall be identified as "Property Tax Credit Table A." The table to be provided for the elderly, blind, or disabled individuals entitled to claim this credit shall be identified as "Property Tax Credit Table B."

113.6 Table A amounts of household gross income shall be in increments of five hundred dollars ($500) for those households having gross household incomes of nine thousand nine hundred ninety-nine dollars ($9,999) or less, and in increments of one thousand ($1,000) for those households having household gross incomes from

ten thousand dollars to twenty thousand dollars ($10,000 to $20,000). Table B amounts of household gross income shall be in increments of five hundred dollars ($500).

113.7 Table A shall be in increments of twenty dollars ($20) for the amounts of property taxes paid or rent constituting property taxes paid. Table B shall be in increments of ten dollars ($10) for the amounts of property taxes paid or rent constituting property taxes paid.

113.8 The product indicating the amount of relief in each cell in the tables shall be rounded to the nearest whole dollar.

113.9 In addition to the definitions set forth in D.C. Code §47-1806.6(b), the following words and phrases shall have the meanings ascribed:

(a) Household income includes household gross income received by all individual members of a household during the calendar year while such individuals were members of the household;

(b) Members of a household means all members of one household, whether or not they are related. For example, two (2) or more unrelated individuals sharing an apartment constitute the members of a household;

(c) Gifts from nongovernmental sources shall not include any amounts received by a recipient who is required to perform some act or render some service as a condition for the receipt of the gift;

(d) Dwelling house means the structure where the claimant resides or has his or her principal place of abode whether or not he or she is domiciled in the District; and

(e) Claimant shall not include any individual who is absent from his or her home(s) in the District for more than one hundred eighty (180) days in the calendar year which the claim is made, or any individual under sixty-five (65) years of age who is claimed as a dependent on any federal, State, or District income tax return during the year for which a claim is made.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCR §305.7; as amended by Regulation No. 74-45 effective December 12, 1974; by the Third Amendment to the Revenue Act of 1975 Act, D.C. Law 1-61, 22 DCR 4383 (February 12, 1976); by Final Rulemaking published at 25 DCR 4784 (November 27, 1978); and by Final Rulemaking published at 32 DCR 1354, 1356 (March 8, 1985).

114 CREDITS FOR INDIVIDUAL INCOME TAX PAID TO OTHER JURISDICTIONS AND CAMPAIGN CONTRIBUTIONS

114.1 Any resident claiming credit on his or her individual income tax return, Form D-40, for income tax required to be paid for the taxable year to another state, territory or possession of the United States, or political subdivision thereof on income attributable thereto, shall submit with Form D-40 the following information:

(a) A copy of the income tax return required to be filed with the other state, territory or political subdivision; and

(b) If requested, proof of payment of the income tax paid.

114.2 Treatment of the credit as it relates to income from intangible property (dividends, interest, etc.) shall be afforded as follows:

(a) Credit shall not be allowed for income tax paid to another jurisdiction on income from intangible property whose source is in the District;

(b) If the taxpayer is domiciled in the District but required to pay a tax to another jurisdiction on income from intangible property derived from sources within that jurisdiction, the credit shall be allowed; and

(c) A statutory resident of the District domiciled outside the District and who is required to pay a tax to his or her state of domicile on income from intangible property from jurisdictions other than the District shall be allowed a credit.

114.3 For the purpose of establishing the amount of the political campaign contribution credit to be allowed under the Act, any individual claiming the credit shall submit the information on a form prescribed by the Deputy Chief Financial Officer.

114.4 The political campaign contribution credit shall not exceed the amount of any individual's District income tax liability.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §305.8; as amended by Regulation No. 74-43 effective December 27, 1974; by Final Rulemaking published at 30 DCR 1255, 1256 (March 18, 1983); and by Final Rulemaking published at 30 DCR 1922, 1923 (April 29, 1983), designating §§114.2 and 114.3 as 114.3 and 114.4 respectively.

115 CREDIT FOR TAX WITHHELD ON WAGES

115.1 The tax deducted and withheld at the source upon wages under the provisions of §8(b) and §8(c) of Title 12 of the Act shall be allowable as a credit against the tax imposed by §3 of Title 6 of the Act upon the recipient of the income.

115.2 The credit set forth in §115.1 shall be allowed against the tax imposed by §3 of Title 6 of the Act for the taxable year of the recipient of the income which begins in that calendar year; Provided, that credit may be denied unless supporting Form D-2 withholding statements are furnished to the Deputy Chief Financial Officer.

115.3 If the recipient of income has more than one taxable year beginning in that calendar year, the credit shall be allowed against the tax for the last taxable year so beginning.

115.4 If the tax has been withheld at the source by an employer outside the District, credit or refund may be denied to the employee until that tax has been paid over to the Deputy Chief Financial Officer by the employer.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §305.3.

116 TAX ON CORPORATIONS AND FINANCIAL INSTITUTIONS

116.1 The taxable income of corporations and financial institutions under Title 7 is defined to mean "the amount of net income derived from sources within the District within the meaning of Title 10 of the Act;" therefore, to determine what is "taxable income" of financial institutions and corporations, it is necessary to apply the provisions of Title 10 of the Act and §§121 through 129 of this chapter.

116.2 The tax imposed upon corporations and financial institutions is levied for the privilege of carrying on or engaging in a trade or business within the District, and of receiving other income which is derived from sources within the District.

116.3 The term "corporation" includes any trust, association, join stock company, or partnership classed (or which should be classed) as a corporation for purposes of federal income taxation.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §§306.1 and 306.2; as amended by Final Rulemaking published at 28 DCR 5393 (December 18, 1981), incorporating text of Proposed Rulemaking published at 28 DCR 4112 (September 18, 1981); and by Final Rulemaking published at 30 DCR 1255, 1256 (March 18, 1983).

117 TAX ON UNINCORPORATED BUSINESSES

117.1 The design of the unincorporated business tax under the law is to impose a tax upon all business income which would be subject to the corporation franchise tax (as though the business were incorporated), without regard to whether the business is carried on by an individual, a partnership, or some other unincorporated entity.

117.2 The term "unincorporated entity" includes, but is not limited to, concurrent ownership in property.

117.3 In the great majority of cases there will be no question whether an entity is conducting or engaging in a trade, business, or occupation which is subject to the tax.

117.4 The terms of the statute are extremely broad and include all kinds of businesses, trades, and occupations.

117.5 For purposes of the exclusion for ministers of religion, only authorized ministers of recognized religious sects and Christian Science practitioners are not engaging in an unincorporated business.

117.6 If an individual or other entity carries on two (2) or more distinct businesses, all of the businesses shall be consolidated in one (1) return. The taxpayer cannot treat each distinct business separately.

117.7 The net income of all non-exempt business carried on by an individual or other entity determines its unincorporated business franchise tax liability. An individual or other entity is entitled to only one (1) exemption of five thousand

dollars ($5,000), rather than an exemption of that amount on each distinct business; Provided, that if an individual conducts one (1) business as sole owner and is a member of a partnership which conducts a distinct business, those businesses would be considered different entities, and each would be entitled to a five thousand dollars ($5,000) exemption.

117.8 The operation of one (1) or more apartment house, hotel, dwelling, boarding house, or other building or part of a building is classed as an unincorporated business if conducted by an individual, partnership, or other unincorporated entity.

117.9 Often the continuity, frequency, and regularity of activities, as distinguished from transactions of an isolated or incidental nature, will be the factors which will determine whether activities constitute the carrying on of an unincorporated business.

For example, an individual would not be deemed to be engaged in an unincorporated business solely by reason of the purchase and sale of real estate for his or her own account, but if he or she makes a business of buying and selling real estate, such activities would be subject to the unincorporated business tax. Similarly, if an individual devotes part of his or her time, energy, and thought to stock and commodity markets and trades in securities and commodities, he or she is not carrying on an unincorporated business, if those activities are of an isolated or incidental nature and are not conducted as a business.

117.10 A person(s) conducting or operating a trade or business which such person(s) believes is exempt from the tax on unincorporated businesses may, in order to obtain the exemption, file with the Mayor a request for ruling thereon if:

(a) The trade or business renders personal services; and

(b) The trade or business is not specifically exempted by the Act or this chapter.

117.11 The request for ruling provided for under §117.10 shall be in writing and shall include the following information:

(a) The nature of the trade or business;

(b) The methods of operation of the trade or business; and

(c) The reasons which are believed to sustain the claim for exemption.

117.12 The burden of establishing the exemption to the satisfaction of the Mayor shall be upon the person(s) conducting or operating the trade or business.

117.13 Gain (other than ordinary gain resulting from the recapture of depreciation referred to in §117.14) or loss from the sale or other disposition of property that results in the termination of an unincorporated business subject to the tax imposed under Title 8 of the Act shall be recognized and reported by the owners of the business rather than by the business entity.

117.14 Gain or loss from the sale or other disposition of property that does not result in the termination of an unincorporated business subject to the tax imposed under

title 8 of the Act shall be recognized and reported by the unincorporated business entity.

117.15 Depreciation required to be recaptured in accordance with the Act (D.C. Code §47-1801 *et seq.*), and corresponding federal provisions shall be recognized and reported by the unincorporated business entity in the same manner and to the same extent as a corporation is required to recapture depreciation under the Act and the Federal provisions.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §§307.2, 307.3, 307.5, 307.8 and 307.8; as amended by the Third Amendment to the Revenue Act of 1975 Act, D.C. Law 1-61, 22 DCR 4383 (February 12, 1986); by Final Rulemaking published at 30 DCR 1922, 1924 (April 29, 1983); and by Final Rulemaking published at 34 DCR 3846 (June 12, 1987).

118 UNINCORPORATED BUSINESS OF A DECEDENT

118.1 The unincorporated business of a decedent which is carried on by an executor or administrator shall be taxable.

118.2 If a receiver or trustee continues the business of an individual or partnership and is duly authorized to continue or carry on that business, the income derived from the business shall be taxable; Provided, that if that business becomes incorporated, it would thereafter be subject to the corporation franchise tax instead of the unincorporated business franchise tax.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §307.6.

119 TAX COMPUTATIONS FOR UNINCORPORATED BUSINESSES

119.1 As in the case of corporations, the phrase "taxable income" of unincorporated business means the amount of net income derived from sources within the District within the meaning of Title 10 of the Act, and shall be determined in accordance with Title 10 of the Act and §122 of this chapter; except as otherwise provided in §119.6.

119.2 Under the Act, the net income of an unincorporated business is computed in practically the same manner as the net income of a corporation. Accordingly, an unincorporated business is generally entitled to allowable deductions from gross income to the same extent that would be allowable if the business were incorporated.

119.3 The Act is drawn so that only income taxed against an unincorporated business is not again taxed to the owner or owners of the business as individuals.

119.4 No deduction which is allowed or allowable from the gross income of an unincorporated business subject to the tax imposed by Title 8 of the Act shall be allowed as a deduction in the individual return of any person entitled to share in the net income of the business.

119.5 Taxes, contributions, and other deductions of the individual owners of a business which are not applicable to the income of the business are not deductible in the

unincorporated business tax return, but may be deducted in the individual returns of the proprietors, partners, or other persons entitled to share in the net income.

119.6 Any amount exempted from the tax imposed by Title 8 shall be reported and included in the gross income of the person(s) entitled to share in the exemption. If there is more than one (1) taxpayer entitled to share the amount excluded, the amount excluded by each shall be the same proportion as the amount of net income apportioned to that taxpayer for federal income tax purposes. That amount shall be reported in the return of each District resident individual for his or her taxable year in which the taxable year of the business ended.

119.7 The full amount of the exemption allowed by law shall be deductible from the net income from District sources of an unincorporated business (reporting for a full year) whether the entire income of the business is wholly or partly derived from sources within the District.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §§307.9 through 307.12; as amended by the Third Amendment to the Revenue Act of 1975 Act, D.C. Law 1-61, 22 DCR 4383 (February 12, 1976).

120 COMMON TRUST FUNDS

120.1 A common trust fund (as defined by Pub. L. 81-416) shall not be subject to income taxes imposed by the Act, as amended, and for purposes of the Act shall not be deemed to be a corporation.

120.2 While a common trust fund, as such, is not taxable for income tax purposes, the interest of a participant in a common trust fund shall be taxable, if it would be otherwise taxable under the provisions of Title 9 of the Act.

120.3 The net income of a common trust fund shall be computed in the same manner and on the same basis as the net income of an individual.

120.4 In computing its net income, each participant of a common trust fund shall include its proportionate share of the net income of the fund, whether or not distributed to it, and the amount so included in the net income of a participant shall be taxable to that participant or its beneficiary in the manner and to the extent provided in Title 9 of the Act as if any amount not distributed to the participant during its taxable year actually had been so distributed.

120.5 Each bank or trust company maintaining a common trust fund shall make a return under oath for the taxable year of the fund.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §§308.1 through 308.4.

121 FRANCHISE TAX

121.1 As defined in Title 1 of the Act, the words "trade or business" include the engaging in or carrying on of any trade, business, profession, vocation, vocation,

calling, or commercial activity in the District, except as otherwise provided in this chapter.

121.2 The Act provides that the words "trade or business" shall not include, for the purposes of the Act, any of the following:

(a) Sales of tangible personal property whereby title to the property passes within or outside the District by a corporation, financial institution, or unincorporated business which does not physically have or maintain an office, warehouse, or other place of business in the District, and which has no officer, representative, or agent with an office or other place of business in the District during the taxable year;

(b) The words "agent" and "representative," as used in §121.2(a), shall not include any independent broker engaged independently in regularly soliciting orders in the District for sellers and who holds himself or herself out as such; and

(c) While it is not the purpose of this chapter to give specific definitions which may cover most conceivable kinds of employment or activity which come within the statutory definition of "trade or business," the following general definitions are important:

(1) A "business" is that which occupies the time, attention, and labor of persons for the purpose of livelihood or profit. Engaging in business involves the investment of time or capital, or both, on the future outcome of the enterprise, whether it be successful or unsuccessful; and

(2) "Commerce" consists of intercourse and traffic, and includes the transportation of persons and property as well as the purchase, sale, and exchange of commodities.

121.3 A corporation, financial institution, or unincorporated business may derive income from the sale of real property located in the District, from services performed in the District, from rental of real or personal property located in the District, from investments made or other capital employed in the District, and in other ways, and thus be liable for the tax upon that income, even though it maintains no office or other place of business in the District.

121.4 Income from sales of tangible personal property shall be taxable (except as set forth in §121.1) if the taxpayer has or maintains an office, warehouse, or other place of business in the District, or has an officer, agent, or representative having an office or other place of business in the District during the taxable year.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §§309.1 and 309.3; as amended by the Third Amendment to the Revenue Act of 1975 Act, D.C. Law 1-61, 22 DCR 4383 (February 12, 1976); and by Final Rulemaking published at 28 DCR 5393 (December 18, 1981), incorporating text of Proposed Rulemaking published at 28 DCR 4112 (September 18, 1981).

122 ALLOCATION AND APPORTIONMENT

122.1 The measure of the franchise tax shall be that portion of the net income of the corporation, financial institution, or unincorporated business that is fairly attributable to any trade or business engaged in or carried on within the District, as defined in the Act, and such other net income as is derived from sources within the District.

122.2 The portion of net income which is "fairly attributable" to any trade or business or other net income as derived from sources within the District shall be determined by allocation and apportionment, as prescribed in this section.

122.3 If the entire net income is derived from engaging in a trade or business within the District or from sources within the District, all of that income shall be apportioned entirely to the District.

122.4 If the net income is derived from engaging in a trade or business partly within and partly without the District or from sources both within and outside the District, that income shall be allocated and apportioned in accordance with the specific provisions or formulae prescribed in this chapter.

122.5 For purposes of allocation and apportionment of income under this chapter, a taxpayer is taxable in another State if in that State the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax.

122.6 For the purposes of this chapter, the word "sales" means all gross receipts of the taxpayer (including any dividends, interest, royalties, etc., considered to be business income) not allocated under §124.

122.7 The word "allocated," as used in reference to non-business income and deductions from the income, means a determination based upon actual figures specifically applicable to such income and deductions.

122.8 The word "apportioned," as used in reference to net business income, means a ratable portion determined on a percentage basis.

122.9 [Deleted] 32 DCR 1354, 1357 (March 8, 1985).

122.10 The provisions of §§122 through 129 shall be applicable in any case in which the liability of the taxpayer to the District for corporation or unincorporated business franchise tax under the Act has not been finally determined for any year by one of the following means:

(a) Separate accounting (if trade or business is not unitary in nature);

(b) The application of a period of limitations prescribed in the Act; and

(c) A decision of a court which has become final.

122.11 All income received by financial institutions (except dividends of corporations or financial institutions), however categorized, shall be deemed to be business income.

122.12 If a financial institution's only place(s) of business is (are) in the District, it shall allocate all business income to the District.

122.13 For purposes of allocation and apportionment under §122, the following words shall have the meanings set forth in this subsection:

(a) "Business income" means as follows:

(1) Income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitutes integral parts of the taxpayer's regular trade or business operations;

(2) Income of any type or class and from any source, such as manufacturing income, compensation from services, sales income, interest, dividends, rents, royalties, gains, operating or non-operating income, etc., is business income if it arises from transactions and activities occurring in the regular course of a trade or business;

(3) The critical element in determining whether income is business or non-business shall be the identification of the underlying transactions and activities which are elements of a particular trade or business; and

(4) In general, all transactions and activities of the taxpayer which are dependent upon or contribute to the operations of the taxpayer's economic enterprise as a whole constitute the taxpayer's trade or business and shall be transactions and activities arising in the regular course of, and shall constitute integral parts of, the trade or business;

(b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed;

(c) "Compensation" means wages, salaries, commissions and any other form of remuneration paid or accrued to employees for personal services;

(d) "Non-business income" means all income other than business income;

(e) "Transportation company" means any person engaged in the transportation of persons or goods or property of others for hire; and

(f) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §§309.2, 309.4, and 309.5; as amended by Commissioners' Order 61-1214 effective July 14, 1961; by Commissioners' Order 65-742 effective June 3, 1965; by the Third Amendment to the Revenue Act of 1975 Act, D.C. Law 1-61, 22 DCR 4383 (February 12, 1976); by Final

Rulemaking published at 28 DCR 5393 (December 18, 1981), incorporating text of Proposed Rulemaking published at 28 DCR 4112, 4113 (September 18, 1981); by Final Rulemaking published at 30 DCR 1922, 1925 (April 29, 1983); and by Final Rulemaking published at 32 DCR 1354, 1356 (March 8, 1985).

123 DEDUCTIONS WHEN INCOME IS APPORTIONABLE OR EXEMPT

123.1 No deductions shall be allowed for expenses applicable to any income not subject to or exempt from taxation under the Act.

123.2 Where part of any income is apportioned to the District, the deductions applicable to that income and allowable as such under §3(a) of Title 3 of the Act shall be apportioned on the same basis as that used to apportion the income, unless, in the opinion of the Deputy Chief Financial Officer, those deductions should be allocated in whole or in part.

123.3 In the case of corporations, unincorporated businesses, and financial institutions, the deductions provided for in §3(a) of Title 3 shall be allowable only to the extent that they are connected with income fairly attributable to the trade of business carried on or engaged in within the District and from District sources.

123.4 In the context of this section, interest expenses of a corporation, financial institution, or unincorporated business shall be reduced by the amount that the ratio of the average value of the assets producing nontaxable income bears to the average value of the total assets of the corporation, financial institution or unincorporated business.

123.5 Average values of assets shall be computed by one of the following methods:

(a) By adding the values at the beginning and end of a taxable year and dividing the result by 2;

(b) By using an average daily balance; or

(c) Any other method of computation the taxpayer can support with adequate records that clearly reflect the average value of assets.

Example:

Average Value of Assets Producing Nontaxable Income			$ 150,000
Average Value of Total Assets			1,500,000
Interest Expenses			400,000
Interest Expense Not Allowed			
$ 150,000 / 1,500,000	X	$400,000	$ 40,000
Interest Expenses Allowable			$ 360,000

123.6 Administrative expense (such as salaries for officers or employees whose duties include the management of or investing securities, the income from which is not

subject to taxation under the Act), shall be apportioned or allocated in a manner that reflects that portion of salaries attributable to taxable and nontaxable activities.

Example:	
Officer and Employee Salaries	$200,000
Portion of working hours attributable to activities not taxable	2%
Salary expense required to be allocated to nontaxable activities (2% X $200,000)	$4,000
Salary expense apportionable to taxable activities	$196,000

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §309.6; as amended by Final Rulemaking published 28 DCR 5393 (December 18, 1981), incorporating text of Proposed Rulemaking published at 28 DCR 4112 (September 18, 1981); and by Final Rulemaking published at 34 DCR 3846 (June 12, 1987).

124 ALLOCATION OF NON-BUSINESS INCOME

124.1 Net rents and royalties from real property located in the District shall be allocable to the District.

124.2 Net rents and royalties from tangible personal property shall be allocable to the District, as follows:

(a) To the extent that the property is utilized or located in the District; or

(b) In their entirety if the taxpayer's commercial domicile is in the District and the taxpayer is not taxable in the State in which the property is utilized.

124.3 The extent of utilization of tangible personal property in the District shall be determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the District during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year.

124.4 If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, the tangible personal property is utilized in the State in which the property was located at the time the rental or royalty payer obtained possession.

124.5 Gains and profits and losses from sales or exchanges of real property located in the District, including capital assets, shall be allocable to the District.

124.6 Gains and profits and losses from sales or exchanges of tangible personal property, including capital assets, by a taxpayer engaged in trade or business in the District shall be allocable to the District in the following instances:

(a) If the property had a situs in the District at the time of the sale; or

(b) If the taxpayer's commercial domicile is in the District and the taxpayer is not taxable in the State in which the property had a situs.

124.7 Gains and profits and losses from sales or exchanges of intangible personal property, including capital assets, are allocable to the District if the taxpayer's commercial domicile is in the District.

124.8 Interest and dividends from District sources are allocable to the District, except interest and dividends specifically excluded from tax under §1 of Title 10 of the Act.

124.9 Rents and royalties from patents, copyrights, trademarks, service marks, secret processes and formulas, goodwill, franchises, and other like property are allocable to the District, as follows:

(a) To the extent that the patent, copyright, trademark, service mark, secret process or formula, goodwill, franchise, or other like property is utilized by the payer in the District; or

(b) To the extent that the patent, copyright, trademark, service mark, secret process or formula, goodwill, franchise, or other like property is utilized by the payer in a State in which the taxpayer is not taxable and the taxpayer's commercial domicile is in the District.

124.10 A patent is utilized in a State to the extent that it is employed in production, fabrication, manufacturing, or other processing in the State or to the extent a patented product is produced in the State.

124.11 A copyright is utilized in a State to the extent that printing or other publication originates in the State.

124.12 Income from sales of tangible personal property to the United States by corporations and unincorporated businesses is from a District source and is allocable to the District unless the entity's principal place of business is located outside the District, and the property is delivered from outside the District for use outside the District.

124.13 All other non-business income which is derived from sources within the District shall be allocable to the District.

124.14 If income is allocable within and outside the District under this section, the expenses, losses, and other deductions arising from production of that income shall be similarly allocable.

124.15 Losses incurred in any transaction entered into for the production of non-business income shall be allowed only to the extent that any profits from the transaction would be taxable under the Act.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §309.5(d); as amended by Final Rulemaking published at 30 DCR 1255, 1256 (March 18, 1983).

125 APPORTIONMENT OF BUSINESS INCOME

125.1 All business income shall be apportioned to the District by multiplying the income by a fraction, the numerator of which is the property factor, plus the payroll factor, plus the sales factor, and the denominator of which is three (3), reduced by the number of factors, if any, having no denominator.

125.2 Rental income from real and tangible property shall be business income if the property with respect to which the rental income was received is used in the taxpayer's trade or business or is incidental thereto.

125.3 Gain or loss from the sale, exchange or other disposition of real, tangible or intangible personal property, shall constitute business income if the property was owned or leased by the taxpayer in the trade or business.

125.4 Interest income shall be business income where the intangible with respect to which the interest was received arises out of or was created in the regular course of the taxpayer's trade or business, or where the purpose for acquiring or holding the intangible is related to or incidental to the trade or business operations.

125.5 Dividends shall be business income where the stock with respect to which the dividends are received arises out of or was acquired in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the stock is related to or incidental to the trade or business.

125.6 Patent and copyright royalties shall be business income where the patent or copyright with respect to which the royalties were received arises out of or was created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the patent or copyright is related to or incidental to the trade or business operation.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §309.5(e); as amended by Final Rulemaking published at 30 DCR 1922, 1925 (April 29, 1983); and by Final Rulemaking published at 32 DCR 1354, 1357 (March 8, 1985).

126 PROPERTY FACTOR

126.1 The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned by or rented to the taxpayer and used by the taxpayer in the District during the taxable year; and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned by or rented to the taxpayer and used by the taxpayer during the taxable year; except that neither the numerator nor the denominator of

the property factor shall include property, or any portion of property, which is not used to produce business income.

126.2 In the case of transportation companies, the numerator of the property factor, in addition to other property described in §126.1, shall include that portion of the average value of vehicles, rolling stock, aircraft, watercraft of all kinds, and other equipment used by the taxpayer during the taxable period to transport persons and property within and outside the District as the total miles per unit of equipment traveled in the District by each class of the property bear to the total miles per unit of equipment traveled everywhere by each respective class of property. In the case of railroad companies, the "classes of property" shall be those classes required to be reported for District personal property tax purposes pursuant to the Act of December 15, 1945 (D.C. Code §47-1215).

126.3 If the property is used in any activities the income from which is allocable or apportionable partly under this section and partly under another section or paragraph of this chapter, the taxpayer may employ (subject to the approval of the Deputy Chief Financial Officer) or the Deputy Chief Financial Officer may require the use of any method which will reflect properly the portion of the average value of the property to be used in arriving at the property factor under this section.

126.4 Property owned by the taxpayer shall be valued at its original cost to the taxpayer plus the cost of additions and improvements.

126.5 If the original cost of any property to the taxpayer is not determinable or is zero ($0.00), that property shall be valued by the Deputy Chief Financial Officer at an amount equal to its market value at the time of acquisition by the taxpayer.

126.6 Property rented to the taxpayer shall be valued at eight (8) times the net annual rental rate which is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals; Provided, that the rental and sub-rental rates are reasonable.

126.7 Payments for leased property capitalized in accordance with federal provisions are not considered rent.

126.8 The capitalized value of the property shall be included in the computation of a property factor.

126.9 The term "net annual rental rate" includes amounts paid or accrued for the use or rental of the property or facilities of another whether paid as rent, reasonable compensation for use or by any other designation, and whether paid pursuant to statutory enactment, lease or rental agreement of any kind, contract, or otherwise.

126.10 If the Deputy Chief Financial Officer determines that any net annual rental rate or sub-rental rate is unreasonable, or if a nominal or zero rate is charged, the Deputy Chief Financial Officer may determine and apply a rental rate that will reasonably reflect the value of the property rented by the taxpayer.

126.11 The average value of property shall be determined by averaging the values at the beginning and end of the tax period; but the taxpayer may use (subject to the

approval of the Deputy Chief Financial Officer), or the Deputy Chief Financial Officer may require the averaging of monthly or quarterly values during the tax period if reasonably necessary to reflect properly the average value of the taxpayer's property.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §309.5(f); as amended by Final Rulemaking published at 32 DCR 1354, 1358 (March 8, 1985), redesignating §§126.7, 126.8, and 126.9 as §§126.9, 126.10 and 126.11 respectively.

127 PAYROLL FACTOR

127.1 The payroll factor is a fraction, the numerator of which is the total compensation paid or accrued by the taxpayer in the District during the taxable year, and the denominator or which is the total compensation paid or accrued by the taxpayer everywhere during the taxable year, except that neither the numerator nor the denominator of the payroll factor shall include compensation paid or accrued to employees for personal services rendered in the production of non-business income.

127.2 Compensation paid or accrued other than in cash shall be valued at its fair market value as of the date of payment or accrual.

127.3 In the case of transportation companies, the numerator of the payroll factor, in addition to other compensation described in §127.1, shall include the portion of the total compensation paid or accrued to employees who are employed on vehicles, rolling stock, aircraft, watercraft of all kinds, and other equipment used by the taxpayer during the taxable period to transport persons and property within and outside the District; determined by applying to the total compensation the percentage computed under §126.2 relating to the portion of the average value of vehicles, rolling stock, aircraft, watercraft of all kinds, and other equipment of transportation companies to be included in the numerator of the property factor.

127.4 If compensation is paid or accrued for services the income from which is allocable or apportionable partly under this paragraph and partly under another section or paragraph of this chapter, the taxpayer may employ (subject to the approval of the Deputy Chief Financial Officer), or the Deputy Chief Financial Officer may require the employment of any method which will reflect properly the portion to be used in arriving at the payroll factor under this section.

127.5 Compensation shall be paid or accrued in the District if the individual's service is performed entirely within the District.

127.6 Compensation shall be paid or accrued in the District if the individual's service is performed both within and outside the District but the service performed outside the District is incidental to the individual's service within the District.

127.7 Compensation shall be paid or accrued in the District if some of the individual's service is performed in the District and either of the following is applicable.

(a) The base of operations or, if there is no base of operations, the place from which the service is directed or controlled is within the District; or

(b) The base of operations or the place from which the service is directed or controlled is not in the District or in any State in which some part of the service is performed, but the individual's residence is in the District.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §309.5(g).

128 SALES FACTOR

128.1 The sales factor, except for transportation companies, is a fraction, the numerator of which is the total sales of the taxpayer in the District during the taxable year; and the denominator of which is the total sales of the taxpayer everywhere during the taxable year.

128.2 The sales factor, in the case of transportation companies, is a fraction, the numerator of which is the total revenue units first received by the company as originating or connecting traffic at a point within the District plus the total revenue units discharged or unloaded by the company at a point within the District at the termination of the transportation movement or for transfer to a connecting carrier; and the denominator of which is twice the total revenue units originated everywhere during the taxable year.

128.3 One (1) ton of freight shall constitute one (1) revenue unit; and ten (10) passengers shall constitute one (1) revenue unit.

128.4 If a transportation company's revenue is predominately from the transportation of passengers, the number of passengers loaded and discharged may be used in lieu of originating and terminating tonnage.

128.5 Except for transportation companies, sales other than sales of tangible personal property, are in the District if either of the following apply:

(a) The income-producing activity or service is performed in the District; or

(b) The income-producing activity or service is performed both in and outside the District and a greater proportion of the income producing activity or service is performed in the District than in any other State, based on costs of performance.

128.6 A sale of tangible personal property, including a sale to the United States government, shall be in the District, regardless of the point of passage of title, f.o.b. point, or other conditions of the sale, if any of the following factors apply:

(a) The property is delivered or shipped to a purchaser within the District;

(b) The ultimate destination of the property after all transportation, including transportation by the purchaser, has been completed is a point within the District; or

(c) The property is delivered or shipped from an office, warehouse, store, factory, or other place of storage in the District to a destination outside the District

and the taxpayer is not taxable in the State to which the property is delivered or shipped.

128.7 For the purposes of this section, the word "sales" includes all receipts deemed to be business income not subject to allocation.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §309.5(h); as amended by Final Rulemaking published at 32 DCR 1354, 1358 (March 8, 1985).

129 ALLOCATION AND APPORTIONMENT APPLICABLE TO FINANCIAL INSTITUTIONS

129.1 The District shall impose on a financial institution a franchise tax measured by net income, determined by multiplying the financial institution's base by an apportionment fraction, the numerator of which is the sum of the payroll factor and the gross income factor and the denominator of which is 2. For this purpose the base to which the apportionment fraction is applied shall be the financial institution's net income for that taxable year as defined under Title III of the Act.

129.2 The payroll factor is a fraction, the numerator of which is the total amount paid or accrued in the District by the financial institution as compensation and the denominator of which is the total amount paid or accrued everywhere by the financial institution as compensation during the taxable year.

129.3 Compensation shall be paid in the District if paid to any employee considered to be located or as having regular presence therein.

129.4 All compensation paid by a financial institution to an employee located in a State in which the financial institution is not taxable shall be deemed to have been paid in the District of Columbia, if the financial institution has its principal office located in the District of Columbia.

129.5 The gross income factor is a fraction, the numerator of which is the financial institution's gross income located in the District during the taxable year and the denominator of which is the total gross income of the financial institution during the taxable year.

129.6 All gross income described in §§129.9 through 129.11 which is located in a jurisdiction in which the financial institution is not subject to a "doing business tax" shall be deemed to be located in the District of Columbia if the principal office of the financial institution is located in the District.

129.7 A financial institution whose commercial domicile is in the District and who is subject to a "doing business tax" in another jurisdiction, shall include in the numerator of the income factor for the District any income not required by the other jurisdiction to be included in the numerator of an income factor.

129.8 [Deleted] 32 DCR 1354, 1358 (March 8, 1985).

129.9 The interest, loan placement fees, discount and net gain from each unsecured loan and each loan secured primarily by tangible or intangible personal property, or any

participating interest therein, shall be located in the District if the loan is originated in the District.

129.10 In the case of a financial institution whose commercial domicile is in the District, income from securities, investments, money market instruments or from any other source not required to be apportioned outside the District shall be located in the District.

129.11 The income referred to in §129.10 shall include, but not be limited to, interest, dividends and net gains.

129.12 Except as provided for in §129.7, fees, commissions, service charges, and other forms of gross income from the sales of depository or financial services shall be located in the District if the service is performed therein.

129.13 Sales or services rendered in two (2) or more taxing jurisdictions shall for the purposes of the numerator be included in the numerator of the jurisdiction in which the greater portion of the income-producing activity is performed, based on costs of performance.

129.14 Gross income from the lease of tangible property shall be considered to be located in the District if the property is located therein.

129.15 Except as otherwise provided in this section, tangible property, including real property which is security for a loan, shall be considered to be located in the jurisdiction in which the property is physically situated.

129.16 Tangible personal property which is characteristically moving property, such as motor vehicles, rolling stock, aircraft, vessels, mobile equipment, and the like, and which is leased to others for use, shall be considered to be located in the District if the following conditions are met:

(a) The operation of the property by the lessee is entirely within the District, or the operation without the District is occasional or incidental to its operation within the District; or

(b) The operation of the property by the lessee is in two (2) or more jurisdictions, but the principal base of operations from which the property is sent out by the lessee is in the District.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §309.5(i); as amended by Final Rulemaking published at 28 DCR 5393 (December 18, 1981), incorporating text of Proposed Rulemaking published at 28 DCR 4112 (September 18, 1981); by Final Rulemaking published at 30 DCR 1922, 1925 (April 29, 1983); and by Final Rulemaking published at 32 DCR 1354, 1358 (March 8, 1985).

EDITOR'S NOTE: Final Rules published at 30 DCR 1922 (April 29, 1983) repealed the entire section. A subsection of this section was thereafter repealed in Final Rules published at 32 DCR 1358 (March 8, 1985).

130 WITHHOLDING: GENERAL PROVISIONS

130.1 Each employer [as defined in §3401(d) of the U.S. Internal Revenue Code of 1954 (also referred to as the "IRC")] making payment of wages subject to withholding,

shall deduct, withhold, and pay over to the Deputy Chief Financial Officer the tax required to be withheld.

130.2 Wages subject to withholding are all wages as defined in §3401(a) of the IRC, paid on or after October 1, 1956, by an employer who is required to withhold taxes under the law, to an employee, for services performed within or outside the District.

130.3 An employee shall not include any of the following officers, unless the officer is domiciled within the District at any time during the taxable year:

(a) An elected official of the government of the United States;

(b) An employee on the staff of an elected officer in the legislative branch of the government of the United States if that employee is a *bona fide* resident of the State of residence of the elected officer;

(c) An officer of the executive branch of the U.S. government whose appointment to the office held was by the President of the United States and subject to confirmation by the Senate of the United States, and whose tenure of office is at the pleasure of the President of the United States; or

(d) A Justice of the Supreme Court of the United States.

130.4 When the last date for the payment of a tax falls on a Saturday, Sunday, or a legal holiday, the last date for paying the tax shall be the first business day following that Saturday, Sunday, or holiday.

130.5 In determining the amount to be deducted and withheld, the wages, may, at the election of the employer, be computed to the nearest dollar.

130.6 If the remuneration paid by an employer to an employee for services performed during one-half (1/2) or more of any payroll period of not more than thirty-one (31) consecutive days constitutes wages, all the remuneration paid by the employer to that employee for that period shall be deemed to be wages.

130.7 If the remuneration paid by an employer to an employee for services performed during more than one-half (1/2) of any payroll period of not more than thirty-one (31) days does not constitute wages, then none of the remuneration paid by the employer to that employee for that period shall be deemed to constitute wages.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §§310.2 through 310.4, 310.11, 310.12, 310.16, and 310.20; as amended by Final Rulemaking published at 30 DCR 1922, 1925 (April 29, 1983); and by Final Rulemaking published at 30 DCR 1922, 1925 (April 29, 1983).

131 WITHHOLDING PAYROLL RECORDS

131.1 Each employer shall maintain written records which accurately and completely show the following for each employee:

(a) The sums required to be withheld from each employee; and

(b) The sums actually withheld by the employer from each employee.

131.2 Each employer shall keep the Withholding Exemption Certificates (Forms D-4) submitted by the employer's employees.

131.3 Each employer shall maintain and keep a record of the residence address of each individual employed.

131.4 Each employer shall also maintain and keep a record of the following:

(a) Any changes in the residence address of any employee;

(b) The date the individual employee actually changes his or her residence address; and

(c) Other information that the Deputy Chief Financial Officer may require to enable the Deputy Chief Financial Officer to determine the liability of each employee and the employer under the provisions of the Act and this chapter.

131.5 Each individual employee shall furnish his or her employer with the employee's residence address and shall keep the employer currently advised of each change of residence address and the date the change was made.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §310.1.

132 RETURNS OF TAXES WITHHELD

132.1 The Deputy Chief Financial Officer shall, for the purpose of the filing by an employer of a return of the taxes withheld or required to be withheld by the employer, assign to each employer required to deduct and withhold tax under this Act a period which shall be a calendar month or year.

132.2 A taxpayer not assigned to an annual period shall file monthly tax returns. Employers assigned to an annual reporting period shall not be required to file monthly returns.

132.3 Monthly returns shall be filed on or before the 20th day of the month following the close of each monthly reporting period.

132.4 Annual returns shall be filed on or before the 20th day of January of each year for the preceding year.

132.5 All returns shall be made on forms prescribed by the Deputy Chief Financial Officer.

132.6 A tax booklet containing monthly tax returns for each month of the tax year which can be detached and used (like a payment coupon) shall be provided to each taxpayer required to file monthly returns. Failure to receive forms or returns does not relieve a taxpayer of the responsibility to file and pay timely.

132.7 Tax booklet returns shall be used only to file reports on the type of tax for which intended **(DO NOT USE SALES AND USE TAX BOOKLET RETURNS FOR REPORTING WITHHOLDING TAXES).** Booklet returns are identified by month and shall be used properly for the period indicated.

132.8 Returns shall be filed in accordance with the assigned filing period, and shall continue to be filed on that basis until the Deputy Chief Financial Officer determines that the employer's return shall be made for a different filing period.

132.9 The last return for any employer required to deduct and withhold tax under the Act who, during a calendar year, ceases to engage in business or ceases to pay wages shall be marked by that employer as the "**FINAL RETURN.**" The final return shall state the period for which it is made and the date of the last payment of wages.

132.10 A final return shall be filed with the Deputy Chief Financial Officer on or before the thirtieth (30th) day after the date on which the final payment of wages is made by the employer.

132.11 The following shall be attached to the employer's final return as a part of the return:

(a) A statement setting forth the address at which the employer's records will be kept;

(b) The name of the person keeping the employer's records; and

(c) If the business has been sold or otherwise transferred to any other person, the name and address of that person and the date on which the sale or other transfer of the business took effect.

132.12 If an employer temporarily ceases to pay wages (including employers engaged in seasonal activities and employers paying wages upon which temporarily no taxes were required to be withheld), that employer shall continue to file returns, but shall state on the face of any return on which no tax is required to be reported, the date of the last payment of wages and the date when the employer expects to resume paying wages subject to withholding.

132.13 An annual reconciliation (which is provided on the back of the last (12th) monthly return) shall be filed by each monthly basis taxpayer on or before the 20th day of January 1983.

132.14 Each monthly tax booklet, for the 1982, shall also include an Annual Report of Withholding (Form FR-900B) which shall be completed and filed by each taxpayer on or before January 31, 1983 or within thirty (30) days of the employer's final payroll for 1982 if the employer has ceased carrying on a trade or businesses prior to December 31, 1982.

132.15 Beginning January 1, 1983, each monthly tax booklet shall also include an Annual Reconciliation and Report of Withholding (Form FR-900B) which shall be completed

in full, filed and paid (if any additional tax is due), on or before January 31st of the following year. Form FR-900B shall also be filed within thirty (30) days of the employer's final payroll if the employer has ceased carrying on a trade or business prior to December 31st of each calendar year.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §310.5; as amended by Final Rulemaking published at 28 DCR 1323 (March 27, 1981), incorporating text of Proposed Rulemaking published at 28 DCR 413 (January 23, 1981); by Final Rulemaking published at 29 DCR 514 (January 29, 1982); and by Final Rulemaking published at 30 DCR 1453 (April 1, 1983).

133 PAYMENT OF WITHHOLDING TAX

133.1 All sums which the employer has withheld from employees shall be deemed to be held in trust by the employer for the District.

133.2 With each return filed, every employer shall remit to the Deputy Chief Financial Officer not less than the full amount of the tax which that employer was required to withhold during the filing period covered by the return.

133.3 If, in any filing period, more than the correct amount of tax has been withheld, the amount actually withheld shall be remitted to the District.

133.4 Depository payments shall not be estimated, but shall be the actual amount of tax liability for the period for which payment is made.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §310.6; as amended by Final Rulemaking published at 28 DCR 1323 (March 27, 1981), incorporating text of Proposed Rulemaking published at 28 DCR 413 (January 23, 1981).

134 ADJUSTMENT OR REFUND OF WITHHOLDING TAX DEDUCTED

134.1 If, in any filing period, more than the correct amount of tax is deducted from any wage payment, the over-collection shall be repaid to the employee(s) only in another filing period of the same calendar year.

134.2 The employer shall obtain and keep as a part of the employer's records the written receipt of the employee showing the date and the amount of the repayment.

134.3 Each over-collection not repaid and receipted for the employee shall be reported and paid to the D.C. Treasurer.

134.4 Adjustments of prior returns shall be made in accordance with instructions issued by the Deputy Chief Financial Officer.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §310.7.

135 ANNUAL REPORT OF WITHHOLDING

135.1 Duplicate copies of all withholding statements (Form D-2) or approved substitute withholding statements shall be sent to the District by each employer with the Form D-1 that is due on the last day of January; or with the employer's final

return, if submitted before the end of the calendar year. For years beginning January 1, 1982 and thereafter, withholding statements shall be submitted with Form FR-9008.

135.2 Form D-1 shall be accompanied by a list (in the form of an adding machine tape or a written itemization) setting forth the items of tax withheld at source as shown by the withholding statements (Form D-2).

135.3 If an employer's total payroll consists of a number of separate units or establishments, the duplicate Forms D-2 may be assembled accordingly and a separate list or tape submitted for each unit.

135.4 If separate lists or tapes are submitted in accordance with §135.3, a summary list or tape shall be submitted. The total of the summary list or tape shall agree with the corresponding entry made on Form D-1.

135.5 If the number of the duplicate statements is large, the statements may be forwarded in packages of convenient size.

135.6 If statements are forwarded in packages under §135.5, the packages shall be identified with the name of the employer and consecutively numbered. The number of packages shall be indicated immediately after the employer's name on Form D-1. Form D-1 and the remittance shall be filed in the usual manner, accompanied by a brief statement that Forms D-2 are in separate packages.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §310.8; as amended by Commissioners' Order 71-6 effective February 25, 1971, 17 DCR 567 (March 8, 1971); by Final Rulemaking published at 30 DCR 1453, 1454 (April 1, 1983); and by Final Rulemaking published at 32 DCR 1453 (March 8, 1985).

136 METHODS OF WITHHOLDING TAX

136.1 The tax shall be computed in accordance with one (1) of the methods set forth in this section on the wages paid within each period to any employee.

136.2 **METHOD A - BASED ON A PERCENTAGE OF WAGES PAID:** Each employer electing to use this method shall deduct and withhold on the basis of the payroll period, the number of exemptions claimed by the employee, and the employee's marital status in accordance with the appropriate withholding table (See Table I).

136.3 **METHOD B - BASED ON THE USE OF WITHHOLDING TAX TABLES:** Each employer electing to use one (1) of the withholding tax tables shall deduct and withhold on the basis of the number of withholding exemptions claimed by the employee on the withholding exemption certificate filed by the employee with the employer. (See Table II).

136.4 [Deleted] 34 DCR 2401 (April 10, 1987).

136.5 **METHOD C - EXCEPTION:** If federal income tax is not required to be withheld for any group of employees, D.C. income tax shall be withheld at the rate of three percent (3%) of all wages paid to those employees; Provided however, that the three percent (3%) shall not be applied when the wages paid do not exceed:

(a) One thousand seven hundred fifty dollars ($1,750) in the case of single persons;

(b) Two thousand five hundred dollars ($2,500) in the case of married persons filing jointly; and

(c) One thousand two hundred fifty dollars ($1,250) in the case of married persons filing separately.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §310.13; as amended by Commissioners' Order 66-1550 effective October 6, 1966; by Commissioners' Order 71-6 effective February 25, 1971, 17 DCR 567 (March 8, 1971); by Regulation No. 71-31, 18 DCR 217 (October 18, 1971); by Final Rulemaking published at 30 DCR 1255, 1256 (March 18, 1983); by Final Rulemaking published at 30 DCR 4329 (August 26, 1983); by Final Rulemaking published at 32 DCR 3673 (June 28, 1985); and by Final Rulemaking published at 34 DCR 2401 (April 10, 1987).

EDITOR'S NOTE: Copies of Table I (Percentage of Wages Paid Method of Withholding D.C. Income Tax) and Table II (Weekly Withholding Tax Table) may be obtained by mailing requests to the Associate Director, Department of Finance and Revenue, One Judiciary Square, 441 4th Street, N.W., Washington, D.C. 20001.

137 PAYROLL PERIODS: REGULAR AND IRREGULAR

137.1 For the purposes of this chapter, the term "payroll period" means the period for which a payment of wages is ordinarily made to the employee by an employer.

137.2 It is immaterial that the wages are not always paid at regular intervals. The following are examples of this situation:

(a) If an employer ordinarily pays a particular employee for each calendar week at the end of the week, but for some reason the employee in a given week receives a payment in the middle of the week for the portion of the week already elapsed and receives the remainder at the end of the week, the payroll period is still the calendar week; and

(b) If an employee is sent on a three (3) week trip by the employer and receives at the end of the trip a single wage payment for all services during that three (3) week period, the payroll period is still the calendar week, and wage payment shall be treated as though it were three (3) separate weekly wage payments.

137.3 An employee can have one (1) payroll period with respect to wages paid by any one (1) employer. Thus, if an employee is paid a regular wage for a weekly payroll period and, in addition, is paid supplemental wages (for example, a bonus) which is determined with respect to a different period, the payroll period is the weekly payroll period.

137.4 The term "miscellaneous payroll period," as used in this chapter, means a payroll period other than a daily weekly, biweekly, monthly, semi-monthly, quarterly, semi-annual, or annual payroll period.

137.5 If wages are paid for a period which is not a payroll period, the amount to be deducted and withheld shall be the amount applicable in the case of a miscellaneous payroll period containing a number of days (including Sundays and holidays) equal to the number of days in the period with respect to which the wages are paid.

137.6 If wages are paid without regard to any period (for example, the commission paid to a salesman upon consummation of a sale), the amount of tax to be deducted and withheld shall be determined in the same manner as in the case of a miscellaneous payroll period containing the number of days (including Sundays and holidays) which have elapsed since the date of the last payment of wages by the employer during the calendar year or the date of commencement of employment during that year, or January 1st of that year, whichever is the latest.

137.7 If wages are paid to an employee for a payroll period of more than one (1) year, the amount of the tax required to be deducted and withheld with respect to those wages shall be determined as if the payroll period constituted a miscellaneous payroll period of three hundred and sixty-five (365) days.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §§310.14 and 310.15.

138 ADDITIONAL WITHHOLDING

138.1 Amounts, in addition to taxes required to be withheld, may be withheld by an employer under an agreement between the employer and employee.

138.2 Additional amounts withheld pursuant to an employer-employee agreement, together with the amounts otherwise required to be withheld, shall be considered the amounts required to be deducted and withheld.

138.3 The additional withholding, together with the amounts otherwise required to be withheld, shall be reported on Form D-2 as income tax withheld from wages.

138.4 The agreement shall be in writing in the form prescribed by the Deputy Chief Financial Officer, and shall be executed in duplicate by the employer and the employee. One (1) copy of the agreement shall be retained by the employer and one (1) copy shall be retained by the employee.

138.5 An agreement for additional withholding shall be effective for the period as may be mutually agreed upon; however, unless the agreement provides for an earlier termination, either the employer or employee may terminate the agreement by giving written notice effective with respect to the first payment of wages made on or after the first status determination date (January 1st or July 1st), which occurs at least thirty (30) days after the date on which the notice is given.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §310.17.

139 SUPPLEMENTAL WAGE PAYMENTS

139.1 If supplemental wages (such as bonuses, commissions, or overtime pay) are paid at the same time as regular wages, the tax to be withheld shall be determined as if the aggregate of the supplemental and regular wages were a single wage payment for the regular payroll period.

139.2 If supplemental wages are paid at a different time, the employer shall determine the tax to be withheld by aggregating the supplemental wage either with the

regular wages for the current payroll period or with the regular wages for the last preceding payroll period with the same calendar year.

139.3 If an employee receives vacation pay for the time of a vacation absence, the vacation pay shall be subject to withholding as though it were a regular wage payment made for the payroll period or periods which occur during the vacation.

139.4 If vacation pay is paid in addition to regular wages to an employee who forgoes his or her vacation, those payments shall be treated as supplemental wages.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §310.18.

140 WAGES PAID ON BEHALF OF TWO OR MORE EMPLOYERS

140.1 If a payment of wages is made to an employee by an employer through an agent, fiduciary (or other person who also has the control, receipt, custody, or disposal of, or pays the wages payable by another employer to the employee), the amount of the tax required to be withheld on each wage payment shall be determined upon the aggregate amount of that wage payment or payments in the same manner as if the aggregate amount had been paid by one employer.

140.2 The determination made in accordance with §140.1 shall be made without regard to whether the wages are paid separately on behalf of each employer or paid in a lump sum on behalf of all employers.

140.3 Each employer shall be liable for the return and payment of a *pro rata* portion of the tax. In other words, each employer's portion shall be based on the ratio of the amount paid as wages by that particular employer to the aggregate of all wages.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §310.19.

141 EMPLOYEE WITHHOLDING EXEMPTIONS

141.1 Each withholding exemption shall equal seven hundred fifty dollars ($750).

141.2 An employee shall be entitled to the following number of withholding exemptions (except as limited by §141.3):

(a) One (1) withholding exemption for the employee;

(b) One (1) additional withholding exemption if the employee is the head of household, as defined in the Act;

(c) One (1) additional withholding exemption for each dependent, as defined in the Act;

(d) If the employee is married and lives with the spouse, the one (1) withholding exemption to which the spouse is entitled, or would be entitled if the spouse were an employee, under §141.2(a);

(e) One (1) additional withholding exemption if the employee or the employee's spouse will have attained the age of sixty-five (65) before the close of the employee's taxable year; or two (2) additional withholding exemptions if both the employee and spouse will have attained the age of sixty-five (65) before the close of the employee's taxable year and the employee claims both these exemptions;

(f) One (1) additional withholding exemption if the employee or the employee's spouse is blind at the close of the employee's taxable year; or two (2) additional withholding exemptions if both the employee and spouse are blind at the close of the employee's taxable year and the employee claims both exemptions; and

(g) Employees may claim additional exemptions in accordance with the provisions of §8(e)(8) of Title 12 of the Act if estimated itemized deductions for the taxable year exceed the zero bracket amount to which the employee is entitled.

141.3 The additional exemptions allowed under paragraphs (d), (e), and (f) of §141.2 shall be allowed only if the employee's spouse does not have in effect a withholding exemption certificate claiming the same withholding exemptions.

141.4 For the purposes of this chapter, an individual is blind only if his or her central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees (20°).

141.5 Employers shall be required to allow withholding exemptions to each employee on the basis of a withholding exemption certificate signed by the employee.

141.6 If an employee fails to furnish a certificate, the employer shall withhold the tax as if the employee had claimed no withholding exemptions.

141.7 The employer shall not be required to determine whether the employee had claimed the correct number of exemptions; however, if there is reason to believe that the employee has claimed an excessive number of exemptions, the Department of Finance and Revenue shall be so advised.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §310.21; as amended by Commissioners' Order 60-85 effective January 14, 1960, 6 DCR 197 (January 25, 1960); by the Third Amendment to the Revenue Act of 1975 Act, D.C. Law 1-61, 22 DCR 4383 (February 17, 1976); and by Final Rulemaking published at 30 DCR 1255, 1257 (March 18, 1983).

142 WITHHOLDING EXEMPTION CERTIFICATES

142.1 Each employee shall be required to file with his or her employer a withholding exemption certificate on Form D-4 on or before the date of commencement of employment.

142.2 Blank copies of Withholding Exemption Certificates (Form D-4) shall be supplied by the Deputy Chief Financial Officer, upon request.

142.3 Once filed with the employer, a withholding exemption certificate on Form D-4 shall remain in effect until an amended certificate is furnished.

142.4 Amended certificates to show changes in exemption status shall be filed by employees on Form D-4, in accordance with §§142.7 and 142.8.

142.5 The employer may make an amended certificate effective with the next payment of wages, but shall be permitted to postpone the effective date until the first status determination date (January 1st July 1st) which occurs at least thirty (30) days after the date on which the certificate is filed with the employer.

142.6 Prior to December 1st of each year, each employer shall request employees to file amended exemption certificates for the ensuing year if the withholding exemptions to which an employee may reasonably be expected to be entitled at the beginning of the employee's next taxable year will be different from the exemptions to which the employee is entitled on the last exemption certificate previously filed with the employer.

142.7 An employee shall file an amended certificate reducing the number of exemptions within ten (10) days of any of the following events:

(a) When the spouse for whom the employee has been claiming exemption dies, is divorced or legally separated, or claims his or her own exemption on a separate certificate;

(b) When the support of a dependent for whom the employee claimed exemption is taken over by someone else, so that the employee no longer expects to furnish more than half (1/2) of the support for the year;

(c) When the employee finds that a dependent for whom an exemption was claimed will not qualify as a dependent for that year;

(d) When the employee no longer maintains "head of family" status; and

(e) When the employee is no longer entitled to the additional exemptions claimed pursuant to §141.2(g).

142.8 An employee may file an amended certificate, increasing the number of exemptions, at any time after the occurrence of one (1) or more of the following events:

(a) When the employee claims an exemption for wife (or husband) who does not claim his or her own exemption on a separate certificate (for example, when the employee marries or a spouse stops work);

(b) When a child is born to, or adopted by, the employee;

(c) When the employee begins to support a dependent and expects to provide more than half (1/2) of the dependent's support for the current year;

(d) When the employee finds that an individual for whom he or she has not claimed an exemption will qualify as a dependent for the year;

(e) When the employee attains "head of household" status;

(f) When the employee or the employee's spouse attains the age of sixty-five (65);

(g) When the employee or the employee's spouse becomes blind; and

(h) When the employee's estimated itemized deductions for the taxable year exceed the allowable zero bracket amount by seven hundred and fifty dollars ($750).

142.9 The withholding exemption certificate shall be executed on the form prescribed by the Deputy Chief Financial Officer, and shall contain the following information:

(a) The name, District home address, and social security number of the employee;

(b) The number of withholding exemptions to which the employee is entitled under the Act, substituting one (1) withholding exemption for each seven hundred fifty dollars ($750) of personal exemption; and

(c) Certification, signature of the employee, and date of signature.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §§310.22 through 310.26; as amended by Commissioners' Order 71-6 effective February 25, 1971, 17 DCR 567 (March 8, 1971); Commissioners' Order 60-85 effective January 14, 1960, 6 DCR 197 (January 25, 1960); by the Third Amendment to the Revenue Act of 1975 Act, D.C. Law 1-61, 22 DCR 4383 (February 17, 1976); and by Final Rulemaking published at 30 DCR 1255, 1257 (March 18, 1983).

143 WITHHOLDING STATEMENTS (FORM D-2)

143.1 On or before January 31st of each year, each employer shall furnish to each employee from whose wages tax has been withheld the original and one (1) legible copy of the Withholding Statement (Form D-2).

143.2 The original copy of the withholding statement shall be attached to the income tax return required to be filed by the employee for the taxable year beginning in the calendar year for which the withholding statement is made.

143.3 If a taxpayer filing on a calendar year basis files his or her return on or before January 15th of the following year and has not been furnished with the copies of the withholding statement, that taxpayer shall forward the original copy of the Form D-2 to the Deputy Chief Financial Officer upon receipt of it from the employer, and shall submit a statement that a return has been filed and that the withholding statement was not submitted with the return.

143.4 The Withholding Statement (Form D-2) shall show the following:

(a) The name and address of the employer;

(b) The employer's District business tax registration number;

(c) The name and address of the employee;

(d) The employee' social security number;

(e) The total amount of wages paid during the entire calendar year to the employee; and

(f) The amount of District income tax withheld during that calendar year.

143.5 The form of the Withholding Statement (Form D-2) shall be prescribed by the Deputy Chief Financial Officer.

143.6 An employer may apply to the Deputy Chief Financial Officer for permission to print that employer's own forms. The application shall be approved only if all sample copies of the proposed form submitted with the application are legible and conform substantially to the content and size of the prescribed form.

143.7 If employment ends before the close of the calendar year, the Withholding Statement (Form D-2) shall be furnished to the employees on the day on which the last payment of wages is made.

143.8 In the case of intermittent or interrupted employed, if there is reasonable expectation on the part of both employer and employee of further employment during the calendar year, the furnishing of the statement may be deferred to the date when the expectation of further employment during the calendar year ceases to exist.

143.9 If it becomes necessary to correct a Form D-2 after it has been delivered to an employee, the new statement shall be clearly marked "**CORRECTED BY EMPLOYER**."

143.10 If the withholding statement is lost or destroyed, the employer is authorized to furnish substitute copies to the employee; however, each substitute shall be clearly marked "**REISSUED BY EMPLOYER**."

143.11 Upon application, the Deputy Chief Financial Officer is authorized to grant an employer an extension of time, not to exceed thirty (30) days, in which to furnish employees with Withholding Statements.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §§310.27 and 310.28; as amended by Commissioners' Order 71-6 effective February 25, 1971, 17 DCR 567 (March 8, 1971).

144 ESTIMATED TAX: GENERAL PROVISIONS

144.1 A declaration of estimated tax shall be made by each individual residing or domiciled in the District when gross income not subject to District withholding tax shall result in a tax liability of more than one hundred dollars ($100.00) for the taxable year.

144.2 The requirement set forth in §144.1 shall not apply to any of the following, unless such persons are domiciled within the District at any time during the taxable year:

(a) An elected official of the government of the United States;

(b) Any employee on the staff of an elected officer in the legislative branch of the government of the United States, if that employee is a *bona fide* resident of the State of residence of the elected officer;

(c) Any officer of the executive branch of the U.S. government whose appointment to the office held was by the President of the United States and subject to confirmation by the Senate of the United States, and whose tenure of office is at the pleasure of the President of the United States; or

(d) A Justice of the Supreme Court of the United States.

144.3 At the election of the taxpayer, any installment of estimated tax may be paid prior to the date prescribed for its payment.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §§310.10, 310.29, and 310.32; as amended by Final Rulemaking published at 30 DCR 1255, 1258 (March 8, 1983).

145 DECLARATION OF ESTIMATED INDIVIDUAL INCOME TAX

145.1 The declaration of estimated tax shall be on Form D-40ES. The form may be obtained from the Deputy Chief Financial Officer. The form shall be executed and filed in accordance with the instructions on the form.

145.2 For the purpose of making a declaration, the amount of gross income which the taxpayer can reasonably be expected to receive or accrue (as the case may be, depending upon the method accounting used to compute net income); and the amount of the estimated allowable deduction, personal exemptions, and credit for dependents to be taken into account in computing the amount of the estimated tax shall be determined on the basis of facts and circumstances existing at the time prescribed for the filing of the declaration.

145.3 The declaration shall contain the following:

(a) The amount estimated as the tax for the taxable year;

(b) The amount estimated by the taxpayer as the credit for taxes withheld at the source for the taxable year; and

(c) The excess, if any, of the amount shown under paragraph (a) over the amount shown under paragraph (b), which excess shall be the estimated tax for the taxable year.

145.4 An amended declaration may be made in any case in which the taxpayer estimates that gross income, deductions, or credits will differ from the gross income, deductions, or credits reflected in the previous declaration.

145.5 An amended declaration may also be made based upon a change in the number of exemption to which the taxpayer may be entitled for the then current year.

145.6 Amended declarations shall be on Form D-40ES and marked "**AMENDED.**"

145.7 No amended declaration may be filed during the quarterly period in which the original declaration was filed. Only one (1) amended declaration may be filed in any quarterly period subsequent to the quarterly period during which the original declaration was made.

145.8 In the case of a taxpayer on the calendar year basis, if an original declaration was previously filed, an amended declaration which is to be filed after September 15th may be filed on or before January 15th of the succeeding calendar year.

145.9 In the case of a taxpayer on the fiscal year basis, if an original declaration has previously been filed, an amended declaration which is to be filed after the 15th day of the ninth month of that fiscal year may be filed on or before the 15th day of the first month of the succeeding fiscal year.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §§310.30 and 310.33; as amended by Final Rulemaking published at 27 DCR 4929 (November 7, 1980), incorporating text of Proposed Rulemaking published at 27 DCR 3347 (August 1, 1980).

146 JOINT DECLARATIONS OF ESTIMATED TAX

146.1 A joint declaration may be made by husband and wife, in which case liability with respect to estimated tax shall be joint and several.

146.2 No joint declaration may be made if the husband and wife are separated under a decree of divorce or of separate maintenance, or if they have different taxable years.

146.3 If a joint declaration is made, but a joint return is not made for the taxable year, the estimated tax for that year may be treated as the estimated tax of either husband or wife, or may be divided between them.

146.4 The making of a joint declaration does not require the husband and wife to file a joint final return. However, if a husband and wife make separate declarations, they cannot file a joint return.

146.5 If a joint declaration is made but separate returns are made for the taxable year, the estimated tax for that year may be treated as the estimated tax of either the husband or the wife or may be divided between them in any proportion they may choose.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §310.31; as amended by Final Rulemaking published at 28 DCR 5393 (December 18, 1981), incorporating text of Proposed Rulemaking published at 28 DCR 4112 (September 18, 1981).

147 FILING ESTIMATED TAX DECLARATIONS AND PAYMENT OF TAX

147.1 The Act requires that the first payment of tax shall always accompany the filing of the declaration first filed by the taxpayer.

147.2 If the taxpayer first meets the requirement for filing a declaration after September 15th (or in the case of a fiscal year taxpayer, after the 15th day of the 9th month of the fiscal year), the taxpayer may file an income tax return on or before the 15th

day of the 1st month of the succeeding taxable year (in lieu of making a declaration) and the return shall be considered a declaration. In such cases, the entire tax shall be paid with the return.

147.3 If the taxpayer fails to file a declaration at the time required (including any extension of time), he or she shall pay, when the declaration is filed, all installments of estimated tax which he or she would have paid had he or she filed the declaration at the required time. Any remaining installments of tax shall be paid in the amounts and at the times they would be payable if the declaration had been filed at the required time.

147.4 In the case of an amended declaration filed pursuant to §145.4, there shall be paid concurrently with the filing of the amended declaration an amount which, when added to amounts paid on declarations previously filed for the same taxable year, will aggregate the amount which would have been paid had the amended declaration been filed as the original declaration. Any remaining installments of tax to be paid after the filing of the amended declaration shall be based upon the amended declaration.

147.5 No refund of estimated tax previously paid shall be made except upon the filing of a final income tax return on Form D-40 after the close of the taxable year.

147.6 No extension of time shall be granted for filing a declaration of estimated tax and for paying any amount shown on the declaration to be due unless on or before the date that the declaration is required to be filed or payment of tax is required to be made an application for an extension is filed with the District.

147.7 Each application for extension of time to file shall state the reason why an extension of time is desired by the taxpayer.

147.8 Except for taxpayers who are abroad, no extension for filing declarations may be granted for a period longer than six (6) months.

147.9 The following table sets forth the time for filing of declarations and for making payment of estimated tax for taxpayers filing returns on a calendar year basis:

147.9 (Continued)

CALENDAR YEAR TAXPAYERS

If requirement is first met		Declaration shall be filed on or before	Portion of tax payable	Due date of each payment
AFTER	BUT BEFORE			
Beginning of a year	April 2	April 15	1/4	Date declaration is filed.
			1/4	June 15
			1/4	September 15
			1/4	January 15 of succeeding taxable year
April 1	June 2	June 15	1/3	Date declaration is filed.
			1/3	September 15
			1/3	January 15 of succeeding taxable year.
July 1	Sept. 2	Sept. 15	1/2	Date declaration is filed.
			1/2	January 15 of succeeding taxable year.
October 1	Jan. 1 of succeeding taxable year	Jan. 15 of succeeding taxable year	All	Date declaration is filed.

147.10 The following table sets forth the time for filing declarations and payment of estimated tax or fiscal year bais taxpayers:

147.10 (Continued)

FISCAL YEAR TAXPAYERS

If requirement is first met		Declaration shall be filed on or before	Portion of tax payable	Due date of each payment
AFTER	BUT BEFORE			
Beginning of a fiscal year	2nd day of 4th month of the fiscal year	5th day of the 4th month of the fiscal year	1/4 1/4 1/4 1/4	Date declaration is filed. 15th day of 6th month of FY 15th day of 9th month of FY 15th day of the first month of the succeeding taxable year.
1st day of 4th month of the fiscal year	2nd day of 6th month of the fiscal year	15th day of the 6th month of the fiscal year	1/3	Date declaration is filed. 1/3 15th day of the 9th month of FY 15th day of the first month of the succeeding taxable year.
1st day of 7th month of the fiscal year	2nd day of 9th month of the fiscal year	15th day of the 9th month of the fiscal year	1/2 1/2	Date declaration is filed. 15th day of the first month of the succeeding taxable year.
1st day of 10th month of the fiscal year	1st day of succeeding fiscal year	15th day of the 1st month of the succeeding fiscal year	ALL	Date declaration is filed.

147.11 In accordance with §1(d) of Title XIII of the Act (Underpayment of Estimated Tax by Individuals), there is added to the tax fifteen percent (15%) per annum of the amount by which the tax exceeds estimated tax payments for the period of underpayment.

147.12 The period of underpayment referred to in §147.11 shall run from the date the installment was required to be paid to whichever of the following dates is earlier:

(a) The fifteenth (15th) day of the fourth (4th) month following the close of the taxable year; or

(b) With respect to any portion of the underpayment the date on which that portion is paid.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §§310.9 and 310.35; as amended by Commissioners' Order 71-6 effective February 25, 1971, 17 DCR 567 (March 8, 1971); by Final Rulemaking published at 27 DCR 4929 (November 7, 1980), incorporating text by Proposed Rulemaking published at 27 DCR 3347 (August 1, 1980); by Final Rulemaking published at 30 DCR 1255, 1258 (March 18, 1983); by Final Rulemaking published at 32 DCR 1354, 1358 (March 8, 1985).

148 USE OF TAX RETURN AS A DECLARATION OF ESTIMATED TAX

148.1 If a taxpayer files a District income tax return for a calendar year on or before January 15th of the succeeding calendar year (or if the taxpayer is on a fiscal year basis, on or before the 15th day of the first month immediately following the close of that fiscal year) and pays in full the amount of tax shown on the return as payable, that return shall also be considered a declaration for the taxable year if the taxpayer first met the requirement with respect to filing declaration after September 1st of the taxable year (or the 1st day of the ninth month of the taxable year for fiscal year taxpayers).

148.2 If the tax shown on the return differs from the estimated tax shown in the previously filed declaration, the return shall be considered as an amended declaration the filing of which before the 15th day of the first month following the close of the taxable year is permitted.

148.3 If a taxpayer files on or before September 15th a timely declaration for that year and after that (on or before January 15th of the succeeding taxable year or corresponding date in the case of a taxpayer on a fiscal year basis) files a return for that year, and pays at the time of filing the tax shown by the return to be payable, the return shall be treated as an amended declaration timely filed.

148.4 For the purposes of this section a taxpayer may file a return, Form D-40, on or before the 15th day of the first month following the close of the taxable year even though he or she has not been furnished Form D-2 by his or her employer.

148.5 When filing a return in accordance with §148.4, the taxpayer shall compute, as accurately as possible, his or her wages for the year and the tax withheld for which he or she is entitled to a credit; and shall report those wages and tax on the return, Form D-40, together with all other pertinent information necessary to the determination of tax liability for that year.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §310.34; as amended by Final Rulemaking published at 27 DCR 4929 (November 7, 1980), incorporating text of Proposed Rulemaking published at 27 DCR 3347 (August 1, 1980).

149 DECLARATION AND PAYMENT OF ESTIMATED FRANCHISE TAX

149.1 Each corporation, financial institution, and unincorporated business required to make and file a franchise tax return under this article shall make and file a

declaration of estimated tax if its franchise tax imposed by §1 of Title 10 of the Act for the taxable year can reasonably be expected to exceed one thousand dollars ($1,000).

149.2 For the purpose of this section and §150, any amount paid prior to the last date prescribed in §3(a) of Title V of the Act for filing purposes, shall be deemed to be paid on the last date.

149.3 If an amendment of a declaration is filed, remaining installments, if any, shall be ratably increased or decreased (as the case may be) to reflect the respective increase or decrease in the estimated tax by reason of the amendment.

149.4 If any amendment is made after the fifteenth (15th) day of the ninth (9th) month of the taxable year, any increase in the estimated tax by reason of the amendment shall be paid at the time of making the amendment.

149.5 The declaration of estimated tax required of corporations, financial institutions, and unincorporated businesses shall be filed as follows:

IF THE REQUIREMENTS OF §1 OF TITLE 10 OF THE ACT ARE FIRST MET:	THE DECLARATION SHALL BE FILED ON OR BEFORE:
Before the 1st day of the 4th month of the taxable year:	The 15th day of the 4th month of the taxable year:
After the last day of the 3rd month and before the 1st day of the 6th month of the taxable year:	The 15th day of the 6th month of the taxable year:
After the last day of the 5th month and before the first day of the 9th month of the taxable year:	The 15th day of the 9th month of the taxable year:
After the last day of the 8th month and before the 1st day of the 12th month of the taxable year:	The 15th day of the 12th month of the taxable year.

149.6 If estimated franchise taxes are paid in installments, the amount of estimated tax (as defined in §14 of Title 12 of the Act) with respect to which a declaration is required shall be paid in installments in accordance with the following table:

149.6 (Continued)

IF THE DECLARATION IS TIMELY FILED ON OR BEFORE THE 15th DAY OF THE FOLLOWING MONTH:	THE FOLLOWING PERCENTAGES OF THE ESTIMATED TAX SHALL BE PAID ON THE 15TH DAY OF THE FOLLOWING MONTH:			
	4th Month	6th Month	9th Month	12th Month
4th month of the taxable year	25%	25%	25%	25%
6th month of the taxable year (but after the 15th day of the 4th month)	--	33⅓	33⅓	33⅓
9th month of the taxable year (but after the 15th day of the 6th month)			50	50
12th month of the taxable year (but after the 15th day of the 9th month)				100

149.7 The addition to tax due by corporations and unincorporated businesses referred to in §14(b) of Title XII of the Act shall not be imposed when the taxpayer has met the requirements described in §§6655(d) and (e) of the Internal Revenue Code.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §§310.39 through 310.43; as amended by 28 DCR 5393 (December 18, 1981), incorporating text of Proposed Rulemaking published at 28 DCR 4112 (September 18, 1981); by Final Rulemaking published at 30 DCR 1255, 1258 (March 18, 1983); and by Final Rulemaking published at 32 DCR 1354, 1359 (March 8, 1985).

EDITOR'S NOTE: For the first taxable year beginning after January 1, 1970, only one-half (1/2) of the percentages cited in §149.6 is applicable.

150 OVERPAYMENT OF TAX AND REFUND SET-OFFS

150.1 If it is determined by the Deputy Chief Financial Officer that there has been an overpayment of any tax (whether as deficiency or otherwise), interest shall be allowed and paid upon that overpayment of tax at the rate of six per cent (6%) per annum from the date the overpayment was paid until the date of refund, except as otherwise provided in this section or the Act.

150.2 That part of any overpayment which was not assessed and paid as a deficiency or as additional tax shall bear interest only from the date on which a claim for refund was filed.

150.3 Interest on overpayments resulting from excessive withholding, excessive payments on declarations, or both, shall in no event begin to accrue prior to ninety (90) days after the overpayment is made or after the date of the filing of a final return, whichever is later.

150.4 For the purposes of this section, any tax deducted and withheld during any calendar year and any amounts paid except as provided for in §149.2 prior to the fifteenth (15th) day of the fourth (4th) month after the close of the taxable year as estimated tax shall be deemed to have been paid on the fifteenth (15th) day of the fourth (4th) month following the close of the taxable year.

150.5 No interest may be paid unless a properly completed claim for refund is filed with the Deputy Chief Financial Officer.

150.6 If the final return filed by an individual for the taxable year shows an overpayment resulting from excessive withholding or excessive payments on declarations, or both, an automatic refund of the overpayment shall be made; Provided, that all of the withholding statements supporting all of the withholding taxes claimed as a credit is submitted with the final income tax return. No interest on overpayments shall be allowed or paid on refunds made in this manner.

150.7 If a final return shows an overpayment of less than two dollars ($2), it shall be refunded only upon application to the Deputy Chief Financial Officer.

150.8 No refund of estimated tax previously paid shall be made except upon the filing of a final income tax return on Form D-40 after the close of the taxable year.

150.9 Each claim for refund shall be in writing, under oath, and shall state the specific grounds upon which the claim is based.

150.10 Forms to be used in filing a claim for refund may be obtained from the Deputy Chief Financial Officer, upon request.

150.11 Notwithstanding any other provisions of this section, a refund due on the return of an individual may be intercepted by the Deputy Chief Financial Officer, Office of Tax and Revenue in accordance with the provisions of §11(a) of Title XII of the Act (D.C. Code §47-1812(a)(4)(4a)) as amended.

150.12 For the purposes of this section, the term "set-off" shall mean the amount of a District of Columbia income tax refund intercepted from an individual who is in default on a National Direct Student Loan or a Nursing Student Loan or who is in arrears on court-ordered child support payments, or any combination thereof.

150.13 For the purposes of this section, the phrase, "affected agency" means the following:

(a) The Department of Human Services for an arrearage of court-ordered child support payments; or

(b) The University of the District of Columbia for a default of a National Direct Student Loan or a Nursing Student Loan, or both.

150.14 For the purposes of this section, the phrase "authorized official" shall mean, as it applies to the affected agency, the Deputy Director of the Department of Human Services or the Vice President of the Financial Management Division of the University of District of Columbia.

150.15 The interception of a refund requested by married persons filing on a combined separate form (Columns A and B of Form D-40) shall be limited to the net refund attributable to the spouse who has a set-off. The following example illustrate the application of §150.15:

Example A:

Husband	(Col. A)	Refund	$200.00
Wife	(Col. B)	Refund	100.00
Total Refund			$300.00

The husband has a set-off. He is in arrears of child-support payments. Only two hundred dollars ($200.00) is subject to interception.

Example B:

Husband	(Col. A)	Refund	$200.00
Wife	(Col. B)	Balance	$250.00
Net Balance Due			$ 50.00

The husband is in arrears of child-support payments, a set-off, but no refund is due. Therefore, no interception can be made.

Example C:

Husband	(Col. A)	Balance Due	$100.00
Wife	(Col. B)	Refund	$150.00
Net Balance Due			$ 50.00

The wife is in default under the federal student loan program. A set-off is made. Although she computes a refund of one hundred and fifty dollars ($150.00), only the net refund of fifty dollars ($50) is subject to interception.

150.16 The net refund on a joint return (where only Column B of Form D-40 is completed) shall be subject to interception.

150.17 If the taxpayer contends that the intercepted refund is attributable in part to a spouse not subject to the set-off, the taxpayer shall submit a protest together with an amended Form D-40X utilizing the combined-separate filing status (Form D-40, Columns A and B) in accordance with the provisions of §150.20 within the thirty (30) day period specified in paragraph (6) of §11(a) of Title XII of the Act (D.C. Code §47-1812.11(a)(5) and (6)).

150.18 The Bureau of Paternity and Child Support Enforcement, Department of Human Services (hereinafter the "Bureau") or the Office of Financial Management of the University of the District of Columbia (hereinafter the "Division") shall afford any taxpayer aggrieved by the mandate of the Act the opportunity for a hearing to

determine the existence and the amount of a child-support or loan default obligation within thirty (30) days of receipt of the notice of intent to intercept a part or all of the District tax refund.

150.19 All taxpayer requests for a hearing under §150.17 shall be made through the authorized official named in §150.14, or his or her designee.

150.20 The aggrieved taxapayer's protest shall be limited to the following:

(a) The existence or amount of the offset;

(b) The division of a joint return; or

(c) The existence of new facts, issues, or evidence not previously decided.

150.21 Protests concerning the existence or amount of the set-off, or the existence of new facts, issues, or evidence not previously decided shall be reviewed by the affected agency.

150.22 Protests concerning the apportionment of joint returns shall be reviewed by the Office of Tax and Revenue.

150.23 The Office of Tax and Revenue or the affected agency shall maintain official records of each protest, including testimony and exhibits, regarding the interception of a refund when court-ordered child-support payments are in arrears, or when a Federal Student or Nurse Student Loan obligation is determined to be in default. Transcription of any proceedings shall not be required.

150.24 The Office of Tax and Revenue or the affected agency shall notify the taxpayer in writing of any determination as a result of a protest. The notification shall set forth the reason(s) for the determination.

150.25 Any person aggrieved by a determination of the authorized official of the Department of Human Services concerning the existence and the amount of a support obligation may request an adminsitrative review by the Chief, Bureau of Paternity and Child Support Enforcement.

150.26 Any person aggrieved by a determination of the Office of the Comptroller of the University of the District of Columbia concerning the existence and the amount of a Federal Student or Nurse Student Loan obligation may request an administrative review by the Vice President of Financial Management of the University of the District of Columbia.

150.27 The adminstrative review provided for in §§150.25 and 150.26 shall not include issues concerning the apportionment of joint returns. The determination of the Office of Tax and Revenue with respect to the apportionment of joint returns shall be final, and the determination shall not be subject to administrative review by the affected agency.

150.28 If no protest or request for administrative review is filed within a thirty (30) day period, the decision of the affected agency shall be final.

150.29 Any person aggrieved by a final determination of the Office of Tax and Revenue or an affected agency, made pursuant to the §11(a) of Title 12 of the Act (D.C. Code §47-1812.11(a)) may within six (6) months from the date of the determination appeal to the Superior Court of the District of Columbia, in the same manner and to the same extent as set forth in D.C. Code §§47-3303, 47-3304 and 47-3306-3308; Provided, that the person aggrieved shall have first filed a protest and request for hearing, and a request for administrative review as provided for in the Act and this chapter.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §§310.37 and 310.38; as amended by 27 DCR 4929 (November 7, 1980), incorporating text of Proposed Rulemaking published at 27 DCR 3347 (August 1, 1980); by Final Rulemaking published at 30 DCR 1255, 1258 (March 18, 1983); by Final Rulemaking published at 30 DCR 3763 (July 29, 1983); and by Final Rulemaking published at 35 DCR 2028 (March 11, 1988).

151 PENALTIES FOR FAILURE TO FILE RETURNS OR PAY TAXES

151.1 If any person fails to make and file a return within the time prescribed by law, (except in the case of an employer filing quarterly returns), unless it is shown that the failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as the tax on that return five percent (5%) of the amount of the tax (if the failure is for not more than one (1) month), with an additional five percent (5%) for each additional month or fraction of a month during which the failure continues, not exceeding twenty-five percent (25%) in the aggregate.

151.2 For purposes of this section the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

151.3 With respect to declarations of estimated tax, for the purposes of this section, the amount and due date of each installment shall be the same as if a declaration had been filed within the time prescribed showing an estimated tax equal to the correct tax reduced by the amount of credit for tax withheld.

151.4 In the case of any employer who is required to withhold taxes on wages, make a return of those taxes, and pay to the District the taxes required to be withheld, and who fails to withhold the taxes, make the return, or pay to the District the taxes required to be withheld, there shall be imposed on that employer a civil penalty (in addition to any criminal penalty provided by law) of five percent (5%) of the amount required to be shown as tax on the return if the failure is for not more than one (1) month, with an additional five percent (5%) for each additional month or fraction of a month during which the failure continues, not exceeding twenty-five percent (25%) in the aggregate.

151.5 If any corporation, financial institution, or unincorporated business fails to pay the amount of franchise tax within the time prescribed by law or by the Mayor or Council in pursuance of law, five percent (5%) of the tax shall be added to the tax for each month or fraction of a month that the failure continues, not to exceed twenty-five percent (25%) in the aggregate.

151.6 The penalty for failure to pay the franchise tax within the time prescribed shall be, in addition to all other penalties, prescribed by the Act.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCR §§311.1 through 311.3; as amended by Commissioners' Order 67-579, 13 DCR 251 (May 1, 1967); by the Third Amendment to the Revenue Act of 1975 Act, D.C. Law 1-61, 22 DCR 4383 (February 12, 1976); and by Final Rulemaking published at 28 DCR 5393 (December 18, 1981), incorporating text of Proposed Rulemaking published at 28 DCR 4112 (September 18, 1981).

152 TRADE, BUSINESS, AND PROFESSIONAL LICENSES

152.1 Each person (except a registered or practical nurse, a corporation, or an unincorporated business) who has been exempted from the unincorporated business tax either because that person's trade or business cannot by law, custom, or ethics be incorporated or, because more than eighty percent (80%) of the gross income of that trade or business is derived from personal services actually rendered by the individual or members of the partnership or other entity, and in which capital is not a material income-producing factor, who engages in or conducts in the District of Columbia a trade or business, is required to apply for and obtain annually a trade, business, or professional license.

152.2 To enable the Deputy Chief Financial Officer to make a determination of the liability of any person for obtaining a license under the provisions of Title 14 of the Act, the Deputy Chief Financial Officer shall be authorized to require that person to furnish any information that the Deputy Chief Financial Officer may need to make a determination.

152.3 Application for license shall be filed with the Deputy Chief Financial Officer prior to December 1st of each year for the succeeding calendar year on forms to be furnished by the Deputy Chief Financial Officer.

152.4 Each application shall be accompanied by the license fee of one hundred dollars ($100).

152.5 Individuals working for others on a salary basis shall not be required to obtain a license pursuant to this section for their work as employees, nor shall registered or practical nurses be required to obtain a license.

152.6 Each person required to obtain a license who commences to engage in or conduct a trade, business, or profession on or after January 1, 1957, shall obtain a license within sixty (60) days after the date of commencement of the trade, business, or profession in the District of Columbia.

152.7 Licenses issued under Title 14 of the Act are in addition, and not in lieu of, all other licenses and permits required by law.

152.8 All licenses issued under Title 14 of the Act and this section shall be in effect for the duration of the calendar year for which issued, unless revoked as provided in Title 14 of the Act.

152.9 All licenses issued under this section shall expire at midnight on the 31st day of December each year.

152.10 No license may be transferred to any person.

SOURCE: Commissioners' Order 56-1431 effective July 24, 1956, 16 DCRR §§310.3, 312.1 through 312.3; as amended by Final Rulemaking published at 32 DCR 1354, 1359 (March 8, 1985).

153 MODIFICATIONS TO INCOME AND DEDUCTIONS

153.1 Income from annuities and pensions may be modified, and the income may be deducted to arrive at the District adjusted gross income under the following circumstances:

(a) If, under the provisions of §72(d)(1) of the Internal Revenue Code (relating to employees' contributions recoverable in three (3) years), the taxpayer's contribution to a pension or annuity has not been recovered;

(b) If amounts received as an annuity or under a pension plan were reported to the District as income under the three percent (3%) rule in effect for years prior to January 1, 1982 (§2(b)(2) of title III of the Act); and

(c) If a computation to support the deduction provided for under this subsection is submitted with the taxpayer's return.

153.2 The following example illustrates the application of this subsection (Taxpayer retired December 31, 1979. Taxpayer's contribution to pension $15,000.):

Year	Pension Income	Included in Federal Gross Income	Included in D.C. Gross Income
1980	$6,000	-0- (Cost not recovered)	$ 450 (3% Rule)
1981	6,400	-0- (Cost not recovered)	$ 450 (3% Rule)
1982	6,900	$ 4,300 (Excess over $15,000 cost)	$4,300* (Federal Conformity)

*The modification to District gross income would be nine hundred dollars ($900), since that amount was previously taxable in the District.

153.3 Income received from retirement plans may be reduced to the extent that contributions to the plans were subject to District income tax in years beginning prior to January 1, 1982.

153.4 The following example illustrates the application of this subsection: (Taxpayer contributed a total of four thousand dollars ($4,000) to an IRA plan for years beginning prior to January 1, 1982. In 1982, taxpayer will be eligible to withdraw the entire amount if he or she elects to do so.)

153.4 (Continued)

Year	Contributions Included in Federal Gross Income	Contributions Included in D.C. Gross Income
Years Prior to 1982	-0-	$4,000
1982	$4,000	$4,000*

*The modification to D.C. adjusted gross income would be four thousand dollars ($4,000), since this amount has been previously taxed by the District.

153.5 Interest received on the amount of contribution withdrawn shall be taxable.

153.6 Carryovers of charitable contributions are allowable in the same manner and to the same extent as permitted under §170(d)(1) of the Internal Revenue Code; Provided, that no deduction shall be allowed for carryovers of contributions made prior to January 1, 1982.

153.7 In the case of two (2) earner married couples, the deduction permitted under §221 of the Internal Revenue Code shall not be applicable to the District of Columbia individual income tax returns, since such deduction serves only to adjust federal tax rates.

153.8 If a taxpayer is an owner of an entity subject to the unincorporated business franchise tax, the individual taxable income of the taxpayer shall be reduced by his or her share of income taxed to the unincorporated business.

153.9 The dividend exclusions allowed to corporations under §243 of the Internal Revenue Code shall not be applicable to the Act.

SOURCE: Final Rulemaking published at 30 DCR 1255, 1258 (March 18, 1983).

154 FEDERAL ADJUSTMENTS TO RETURNS

154.1 The written notice referred to in §10(e) of title XII of the Act (relating to changes or corrections to the taxpayers taxable income made by the Internal Revenue Service or a Court of the United States) shall be addressed to the Audit Division, Office of Tax and Revenue, P.O. Box 556, Washington, D.C. 20044.

154.2 Notification required pursuant to §105.7 which is sent to any addressee other than the addressee specified in that subsection will not cause the statutory period of one hundred and eighty (180) days to begin for purposes of an assessment by the Mayor or his or her duly authorized representatives resulting from the adjustment to taxable income.

SOURCE: Final Rulemaking published at 34 DCR 3846, 3848 (June 12, 1987).